

APPENDIX D

***TRIAL COURT RULING
ON SUBMITTED MATTER (JANUARY 2, 2004) AND
COURT OF APPEAL DECISION (NOVEMBER 8, 2005)***

***TRIAL COURT RULING ON SUBMITTED MATTER
(JANUARY 2, 2004)***

RECEIVED

JAN - 5 2004

Morrison & Foerster

ENDORSED

JAN - 2 2004

Nunc Pro Tunc 12-31-03

By B. Beddow, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

EL DORADO COUNTY,

Dept. 33

No. 03CS00003
consolidated with
No. 03CS00018

Plaintiff/Petitioner,

v.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION DISTRICT 3 et al.,

Defendants/Respondents,

AMENDED
RULING ON SUBMITTED MATTER

LAKES ENTERTAINMENT, INC., et al.,

Real Parties in Interest.

VOICES FOR RURAL LIVING et al.,

Petitioners/Plaintiffs

v.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION et al.,

Respondents/Defendants,

SHINGLE SPRINGS BAND OF MIWOK
INDIANS, SHINGLE SPRINGS RANCHERIA

Intervenor.

The petitioners in these consolidated mandate proceedings challenge the adequacy of an environmental impact report (EIR) prepared by respondent California Department of Transportation (Caltrans) under the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 et seq.) for the construction and operation of an interchange with Highway 50 in El Dorado County. The interchange will connect Highway 50 directly with the Shingle Springs Rancheria, federal property provided to the Shingle Springs Band of Miwok Indians (Tribe) for their governance and residence. (Administrative Record (AR), pp. 10, 68.)

The EIR was prepared by Caltrans jointly with an environmental assessment (EA) of the interchange prepared by the Bureau of Indian Affairs (BIA) pursuant to the National Environmental Policy Act (NEPA). The BIA assists the Tribe in managing its affairs pursuant to the trust relationship between the United States and Native Americans, and in conjunction with the Federal Highway Administration, administers the Indian Reservation Road (IRR) system. (AR, pp. 10, 6380.) The federal portion of the interchange has been made a part of the IRR system.

The interchange project was undertaken and approved to improve access to the Rancheria, which is presently limited to rural roads that pass through private residential developments. (AR, pp. 68-69.) This improved access is intended to allow development of the property for uses specified in the Tribe's land use plan, including a hotel and casino complex to be developed in cooperation with real parties in interest on the southwestern section of the Rancheria. (AR, pp. 69-70.) A Gaming and Management contract for this hotel and casino complex has been approved by the National Indian Gaming Commission (NIGC). (AR, pp. 305, 2064.) An EA for the construction and operation of the complex, prepared under NEPA by the NIGC and the BIA in conjunction with NIGC's approval of the contract, identified and discussed the interchange project that Caltrans and BIA have subsequently analyzed in the EIR and EA under review in this proceeding.¹ (AR, pp. 2042ff., 2065, 2143.)

Project Description

¹ The adequacy of NIGC's EA for the hotel and casino complex has been challenged by petitioner El Dorado County in federal court.

1 Petitioners maintain that, for purposes of environmental review under CEQA, the
2 interchange is part of a project that also includes the hotel and casino to be developed on the
3 Rancheria. Petitioners contend that by not including the hotel and casino in the description of the
4 project analyzed by the Interchange EIR, Caltrans improperly segmented the whole of the project
5 under environmental review and thereby avoided the analysis required by CEQA of the effects of
6 the project components cumulatively.

7 Petitioners' contention has initial appeal. There is no dispute that operation of the
8 hotel and casino will depend upon the construction and operation of the interchange. As
9 indicated in the EA for the hotel and casino, the interchange will provide the main access to the
10 hotel and casino. (AR, p. 2065.) Under CEQA case law, such dependence between
11 developments generally signifies that the developments are part of the same action and require
12 review as a single project to assure that the impacts of the whole project are properly assessed.
13 See CEQA Guidelines, § 15165; *San Joaquin Raptor/Wildlife Rescue Center v. County of*
14 *Stanislaus* (1994) 27 Cal.App.4th 713, 731-732 (expansion of wastewater treatment plant
15 integral to development project).)

16 However, although development of the hotel and casino may depend upon the access
17 to be provided by the interchange, the construction and operation of the interchange is not
18 similarly dependent upon the development of the hotel and casino. The interchange is intended
19 to provide open access to the Rancheria so that the property can be developed for uses consistent
20 with the Tribe's Land Use Plan, uses historically precluded by the highly restricted access to the
21 Rancheria through several rural, partly private roads. (AR, pp. 10, 67-70.) The interchange will
22 provide unrestricted access to the Rancheria as a whole and any uses developed thereon, not just
23 the hotel and casino: (*Ibid.*)

24 More importantly, the hotel and casino cannot properly be considered a project for
25 purposes of CEQA review by Caltrans under subdivision (f) of Government Code section
26 12012.5. The development of the hotel and casino complex is the subject of a compact between
27 the State of California and the Tribe under the federal Indian Gaming Regulatory Act that
28 authorizes and regulates Class III gaming and a gaming facility on the Rancheria. (AR,

1 pp. 2960-2997.) Under section 12012.5, which was enacted "in deference to tribal sovereignty,"
2 compliance with the terms of such a state-tribal compact "shall not be deemed to constitute a
3 project for purposes of the California Environmental Quality Act. . . ." As a result, Caltrans
4 lacked authority to include the hotel and casino in the interchange project for purposes of CEQA
5 review. Review of the environmental effects of the hotel and casino could be conducted only
6 pursuant to NEPA by the NIGC and BIA (See AR, p. 2051) and pursuant to an ordinance adopted
7 by the Tribe under section 10.8 of the compact. (AR, pp. 2992-2994.)

8 Caltrans was nonetheless authorized to, and did, evaluate the potential environmental
9 impacts of the hotel and casino under CEQA as growth inducing and indirect effects of the
10 interchange. (AR, pp. 29, 288-289, 305-317.) The EIR recognized that the interchange would
11 facilitate development of the hotel and casino and treated that development as a foreseeable
12 consequence, hence an indirect impact, of the access provided by the interchange to the
13 Rancheria. (AR, pp. 305. See CEQA Guidelines, §§ 15126.2, 15358(a)(2).) In analyzing that
14 indirect impact, the EIR used, not only data and information from technical studies completed
15 during preparation of the EIR, but also data and information in the final EA and technical studies
16 prepared for the hotel and casino project.² (AR, pp. 2016ff., 2042ff., 2929ff.)

17 The EIR also recognized certain environmental impacts of the hotel and casino
18 external to the Rancheria that were expected to combine or interrelate with direct impacts of the
19 interchange. (AR, pp. 14.) In particular, the EIR analyzed the traffic, air quality, and noise
20 impacts of the hotel and casino in combination with those direct impacts of the interchange.
21 (AR, pp. 118-130, 169-176, 182-186.)

22 Thus, although jurisdictional limitations precluded consideration of the hotel and
23 casino as part of the proposed interchange project for purposes of CEQA review, the EIR
24 included analysis of the off-site impacts of the hotel and casino as though they were part of the

25 ² The final EA and supporting technical studies prepared for the hotel and casino project were
26 incorporated by reference into the EIR. (AR, pp. 15, 20-21, 305. See CEQA Guidelines, § 15150.) Petitioners
27 contend that Caltrans relied upon the analysis in the final EA and supporting studies, which had been prepared under
28 NEPA, without independently reviewing the analysis for adequacy under CEQA and curing any inadequacies with
additional or corrected analysis. This contention is essentially an allegation that the analysis in the EIR for the
interchange repeats the inadequacies of the incorporated analysis in the EA and supporting studies, matters addressed
by the court in the remainder of this ruling.

1 interchange project. The combined analysis of traffic, air quality and noise impacts, along with
2 the analysis of indirect and growth inducing impacts related to the hotel and casino, minimized
3 the risk attendant upon project segmentation: a full assessment of the combined and cumulative
4 environmental effects of the interchange and the hotel and casino was prepared and made
5 available to inform decisionmaking and public participation in the project approval process.³
6 (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, *supra*, 27 Cal.App.4th
7 at p. 733-735.)

8 **Air Quality Impacts**

9 The analysis in the EIR of the air quality impacts of the interchange focused on the
10 extent to which the construction and operation of the interchange would result in the emission of
11 reactive organic gases (ROC) and nitrogen oxides (NOx), pollutants that react with each other in
12 the presence of sunlight to form ozone.⁴ (AR, p. 157.) The EIR adopted this focus because the
13 interchange is located in a regional air basin that exceeds the national ambient air quality
14 standard for ozone adopted by the United States Environmental Protection Agency (EPA) under
15 the federal Clean Air Act (42 U.S.C., §§ 7401 et seq., 7408-7409) and the more stringent
16 California ambient air quality standard for ozone adopted by the California Air Resources
17 Control Board (CARB) under the California Clean Air Act. (Health & Saf. Code, § 39606. See
18 AR, pp. 159-160.)

19 **Operational Emissions**

20 The analysis in the EIR of emissions generated by interchange operations determined
21 that the emissions would not constitute a significant impact on air quality and that no mitigation
22 was necessary. (AR, pp. 169-171.) This analysis was based on a transportation conformity

23
24 ³ In connection with their contention that the hotel and casino are a part of the proposed interchange
25 project, petitioners contend that the EIR analysis failed to consider the impacts of an expansion of the hotel and
26 casino complex to include an events or convention center. It is evident from a review of the EA for the hotel and
27 casino project and related material in the administrative record that no events or convention center was planned by
the Tribe and BIA within a reasonably foreseeable period. An analysis in the EIR of the impacts of any such
unplanned and undefined expansion would have been speculative at best and thus not required by CEQA. (See *Del
Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 738.)

28 ⁴ The EIR also analyzed the carbon monoxide emissions resulting from traffic associated with
operation of the interchange and asbestos and particulate matter resulting from construction of the interchange. (AR,
pp. 157.) These analyses are not challenged in this proceeding.

1 determination, made pursuant to the federal Clean Air Act, that the interchange operations would
2 conform with the California State Implementation Plan (SIP) for the attainment of ambient air
3 quality standards for ozone. (*Ibid.* See 42 U.S.C., § 7506.)

4 -The transportation conformity determination

5 The federal Clean Air Act requires the EPA to adopt national ambient air quality
6 standards for pollutants that have adverse health effects. (42 U.S.C. § 7509.) The standards
7 establish levels of the pollutants that are protective of public health. (*Ibid.*) Every state is
8 required to develop a SIP for each area of the state that has not attained the national standards for
9 one of these pollutants. (42 U.S.C., § 7410.) The SIP sets forth strategies for attaining the
10 national standards in each nonattainment area within the timeframes set by the federal Clean Air
11 Act. (42 U.S.C., §§ 7410, 7411.)

12 The California SIP,⁵ prepared by the California Air Resources Board (CARB) and
13 submitted to the EPA in 1994 pursuant to Health and Safety Code section 39602, sets forth ozone
14 attainment strategies for six areas that have not attained the national standard for ozone,
15 including the Sacramento nonattainment area where the interchange project is located.⁶ In
16 addition to federal and state attainment strategies, the SIP incorporates strategies formulated by
17 each of the six nonattainment areas in a regional ozone attainment plan. The federal, state and
18 regional strategies generally seek to attain the national ozone standard by reducing the emissions
19 of ozone precursor pollutants, ROG and NOx, with regulatory requirements and programs for
20 mobile, stationary and area sources of the pollutants. The requirements and programs for mobile
21 sources are predominantly federal and state, while the requirements and programs for stationary
22 and area sources are predominately regional.

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25 ⁵ The court takes judicial notice of the California SIP for Ozone located at:
<http://www.arb.ca.gov/planning/sip/94sip/94sip.htm>. Excerpts of this SIP are attached as Exhibit 22 to Respondent's
26 Request for Judicial Notice filed August 29, 2003.

27 ⁶ The Sacramento nonattainment area is composed of all of Sacramento and Yolo Counties and
28 portions of Placer, El Dorado, Sutter and Solano Counties. The nonattainment area encompasses the geographic
jurisdictions of the Sacramento Metropolitan, Yolo-Solano and Feather River Air Quality Management Districts and
the El Dorado County and Placer County Air Pollution Control Districts. The area is classified as severe and must
achieve the national ozone standard in 2005. (See 42 U.S.C., §§ 7407, 7511; 40 C.F.R., § 81.305.)

1 The goal of the attainment strategies in the SIP is the reduction of ROG and NOx
2 emissions from all sources in each nonattainment area or region to levels that prevent the
3 formation of ozone in excess of the national ozone standard. Those reduced levels of ROG and
4 NOx are determined in each regional ozone attainment plan and constitute the "carrying
5 capacity" of the region. (See Sacramento Area Regional Ozone Attainment Plan, p. E-5.)⁷ The
6 SIP, in turn, calculates the maximum allowable levels of ROG and NOx emissions from each
7 category of emissions source at which the national ozone standard can be attained in each region.
8 (See 40 C.F.R., §§ 93.118, 93.119, 93.122.) For the Sacramento region, those maximum levels
9 of ROG and NOx emissions from mobile sources -- termed mobile source emissions
10 "budgets" -- are 31.32 tons per day of ROG and 61.35 tons per day of NOx. CARB has
11 calculated in the SIP process that these mobile source emissions budgets will be achieved in the
12 Sacramento region by 2005 with the use of the federal, state and regional attainment strategies set
13 forth in the SIP and the Sacramento Area Regional Ozone Attainment Plan.

14 These mobile source emissions budgets serve as the foundation of the transportation
15 conformity determination used in the EIR to analyze the significance of the air quality impacts of
16 the Rancheria interchange. The federal Clean Air Act requires that, before a federal agency like
17 the BIA may approve a transportation project in a nonattainment area like the interchange, the
18 agency must determine that the project conforms with applicable emissions budgets in the SIP.
19 (42 U.S.C. § 7506.) This determination may be made in one of two processes. A metropolitan
20 planning organization (MTO), such as the Sacramento Area Council of Governments (SACOG)
21 for the area where the interchange is located, may include the project in a long-term metropolitan
22 transportation plan (MTP) or a short-term metropolitan transportation improvement program
23 (MTIP)⁸ on the basis of a determination by the MPO that such inclusion conforms with the SIP.
24 Alternatively, the federal agency contemplating approval of the project may perform a

26 ⁷ The court takes judicial notice of the Sacramento Area Regional Ozone Attainment Plan, attached as
27 Exhibit E to Petitioner El Dorado County's Request for Judicial Notice filed August 29, 2003.

28 ⁸ The MPO is designated by the U.S. Department of Transportation and the U.S. EPA. The MTP and
MTIP indicate how federal funds and other resources will be used to operate, maintain and improve the
transportation system in the MPO's area and to achieve national air quality standards. (23 U.S.C., § 134.)

1 project-level determination of conformity with the SIP. In either case, an analysis is made as to
2 whether mobile source emissions generated by the project, when added to mobile source
3 emissions generated by existing and planned transportation facilities, will cause or contribute to
4 an exceedance of the applicable mobile source emissions budgets in the SIP or will impede the
5 effectiveness of the federal, state and regional strategies specified in the SIP to reduce emissions.
6 (See 42 U.S.C., § 7506(c)(1); 40 C.F.R., § 93.118.) If the analysis concludes that no exceedance
7 will result, the project is determined to conform with the SIP and may be included in the MTP
8 and MTIP. Here, upon completion of proceedings on a project-level conformity analysis and
9 determination by the BIA for the interchange, SACOG included the interchange in the MTP and
10 MTIP. (AR, pp. 375-377.)

11 The specific conformity analysis and determination conducted for the interchange
12 consisted of a number of steps using computer simulation or modeling. (AR, pp. 169-171,
13 2237-2238, 8521-8524.) First, three computer programs were used to estimate or forecast the
14 mobile source emissions levels of ROG, NOx and CO generated by the project and existing and
15 planned transportation facilities and programs in the Sacramento nonattainment area by 2005,
16 2015 and 2025. The Direct Travel Impact Model (DTIM2), developed by Caltrans to estimate
17 mobile source emissions, was used to apply mobile source emission rates from CARB's
18 EMFAC7F program to vehicle travel estimates calculated with SACOG's SACMET regional
19 travel model. After various adjustments were made to account for particular emission increases
20 and decreases not addressed by the computer models, the estimated ROG, NOx and CO
21 emissions levels were compared to the applicable mobile source emissions budgets set in the SIP
22 and determined to be lower than the budgets in 2005, 2015 and 2025. In each of those years, the
23 estimated mobile source emissions of ROG, NOx and CO, including ROG, NOx and CO
24 emissions generated by the interchange, were respectively lower than the SIP mobile source
25 emissions budgets of 31.32 for ROG, 61.35 for NOx, and 780 for CO.

26 -Determination of insignificance based on transportation conformity

27 Based on the transportation conformity determination, the analysis in the EIR
28 concluded that the ROG and NOx emissions generated by the interchange were not expected to

1 have a significant impact on air quality and therefore no mitigation of air quality impacts was
2 required. (AR, pp. 170.) In reaching this conclusion, the analysis essentially treated the SIP
3 mobile source emissions budgets for ROG and NOx as thresholds of significance used under
4 CEQA to determine whether an adverse environmental effect of a project is significant and
5 subject to feasible mitigation. (*Ibid.* See CEQA Guidelines, § 15064.7)

6 Petitioners challenge this use of the emissions budgets and reliance on the
7 transportation conformity determination to analyze the significance of the interchange's ROG and
8 NOx emissions. Petitioners contend that the conformity determination did not determine and
9 disclose, as required by CEQA, the ROG and NOx emissions that would be specifically
10 generated by the operation of the interchange; the effect of those emissions on attainment of the
11 state ambient air quality standard for ozone; and the cumulative effect of the emissions on
12 regional air quality. Petitioners further contend that the conformity determination failed to
13 produce accurate information about the ROG and NOx emissions that would be generated by
14 interchange operations, as required by CEQA, because the conformity determination used the
15 computer model EMFAC7F which did not account for recent increases in sport utility vehicles
16 and light trucks with higher rates of emissions in on-road traffic.

17 According to petitioners, the air quality analysis in the EIR would have avoided all of
18 these deficiencies under CEQA if, instead of the conformity determination, the analysis had
19 applied the thresholds of significance specifically designed for analyzing the significance of
20 project air quality impacts under CEQA in the El Dorado County Air Pollution Control District
21 CEQA Guide (El Dorado CEQA Guide).⁹ Pursuant to those thresholds, either ROG or NOx
22 emissions from a project would be considered significant if either exceeds 82 pounds per day.
23 (El Dorado CEQA Guide, Executive Summary, p. 2; Chi. 3, p. 5.)

24 The court observes that a transportation conformity determination under the federal
25 Clean Air Act may provide an appropriate methodology for assessing the air quality impacts of a
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27 ⁹ The court takes judicial notice of the El Dorado County Air Pollution Control District CEQA Guide,
28 attached as Exhibit 12 to Petitioner El Dorado County's [Corrected] Request for Judicial Notice filed August 6,
2003.

1 proposed transportation project under CEQA. Through sophisticated computer modeling, the
2 conformity determination calculates whether the emission of air pollutants caused by operation of
3 the proposed project, in combination with existing and planned transportation facilities and
4 programs in the area where the proposed project is located, will impede or permit the attainment
5 of ambient air quality standards pursuant to a SIP for the area. This determination directly
6 answers the pertinent queries in the CEQA Guidelines for determining whether a proposed
7 project will have a significant air quality impact. (See CEQA Guidelines, Appendix G, III, a), b),
8 and c).)¹⁰ The determination addresses whether the proposed project a) would conflict with or
9 obstruct implementation of the applicable air quality plan; b) would violate any air quality
10 standard or contribute substantially to an existing or projected air quality violation; or c) would
11 result in a cumulatively considerable net increase of any criteria pollutant (e.g., ozone) for which
12 the project region is nonattainment under an applicable federal or state ambient air quality
13 standard (including the release of emissions that exceed quantitative thresholds for ozone
14 precursors).¹¹ (*Ibid.*)

15 Thus, the determination of conformity for the Rancheria interchange in the
16 Sacramento ozone nonattainment area, established that a) there was no conflict between the
17 interchange operations and the regional SIP or Sacramento Area Regional Ozone Attainment
18 Plan. The conformity determination also established that b) the project would not violate or
19 contribute to the violation of the national air quality standard for ozone. And the determination
20 established that c) the emission of ozone precursors (ROG and NOx) generated by the operation
21 of the interchange would not result in a cumulatively considerable net increase of ozone in
22 Sacramento nonattainment region because the ROG and NOx emissions generated by the
23 operation of the interchange, considered cumulatively or collectively with the ROG and NOx
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27 ¹⁰ Queries d) and e) do not appear to be pertinent to interchange operations.

28 ¹¹ The court notes that a transportation conformity determination does not directly address a project's
compliance with state ambient air quality standards, an omission discussed later in this ruling.

1 emissions of existing and planned transportation projects in the nonattainment region, would not
2 exceed the mobile source emissions budgets for ROG and NOx in the regional SIP.¹²

3 These regional mobile source emissions budgets served as quantitative thresholds by
4 which the significance of a regional transportation project like the Rancheria interchange could
5 appropriately be judged in the CEQA review process. The budgets specified that portion of
6 allowable ROG and NOx emissions from all emissions sources that could be emitted by regional
7 mobile source operations without impeding the attainment of the national ozone standard in the
8 region by 2005. In addition, the levels of ROG and NOx emissions specified by the mobile
9 source budgets reflected the reduced levels of mobile source emissions produced by the federal,
10 state and regional control strategies to which CARB and the air quality management districts in
11 the Sacramento nonattainment area had committed in the SIP. Thus, tied to the control strategies
12 that reduced emissions to a level where the national ozone standard could be attained, the mobile
13 source emissions budgets were congruent with the concerns in CEQA for the avoidance or
14 mitigation of significant environmental impacts of proposed projects to the extent feasible. See
15 Pub. Resources Code, §§ 21002, 21081; CEQA Guidelines, § 15002, 15021, 1591.)

16 Contrary to petitioners' contention, the regional focus of the transportation
17 conformity determination did not minimize or conceal the individual and cumulative impacts of
18 the Rancheria interchange on air quality. By considering the emissions resulting from operation
19 of the interchange in combination with emissions from existing and planned transportation
20 facilities in the Sacramento nonattainment area, the conformity determination provided the
21 approach and context necessary for assessing whether the interchange's emissions were
22 significant, i.e., would cause or contribute to the violation of the national ozone standard or
23 impede attainment of the standard. Consideration of the interchange's emissions in isolation
24 from the emissions of other transportation facilities in the region would have foreclosed any
25 meaningful assessment of the significance of the interchange's emissions unless (as was not the

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27 ¹² Because the transportation conformity determination resulted in the inclusion of the Rancheria
28 interchange in the MTP and MTIP, the effect of the ROG and NOx emissions produced by interchange operations on
attainment of the national ozone standard in the Sacramento nonattainment area will be reassessed each time that the
MTP and MTIP are updated.

1 case) the emissions were sufficient in quantity by themselves to violate the air quality standard or
2 impede its attainment. (See CEQA Guidelines, § 15064(b) (significance of project may depend
3 upon its setting).)

4 Nor did the regional focus of the transportation conformity determination lead to any
5 consideration of the relative significance of the interchange's emissions in the Sacramento
6 nonattainment area. There was no improper comparison of the interchange's ROG and NOx
7 emissions to the ROG and NOx emissions in the Sacramento ozone nonattainment area, an
8 approach to CEQA impact analysis disapproved in *Kings County Farm Bureau v. City of*
9 *Hanford* (1990) 221 Cal.App.3d 693, 718-721. (See *Communities for a Better Environment v*
10 *California Resources Agency* (2002) 103 Cal.App.4th 98, 118-120, discussing *Kings County*,
11 *supra*, and *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019,
12 1023-1024. And see CEQA Guidelines, § 15355(b).) Rather, the conformity determination
13 estimated whether the addition of ROG and NOx emissions from interchange operations to the
14 ROG and NOx emissions from existing and planned transportation facilities in the region would
15 have the significant incremental impacts of contributing to the violation of the national ozone
16 standard or impeding attainment of the standard. The only comparison made by the conformity
17 determination was a comparison between the emissions budget as a threshold of significance and
18 the collective emissions of ROG and NOx from existing and planned transportation projects,
19 including the interchange.

20 It is true, as petitioners contend, that the transportation conformity determination did
21 not separately present the quantity of ROG and NOx emissions expected to result from
22 interchange operations. The emissions data presented in the EIR and the supporting technical
23 studies stated estimates of the regional mobile source emissions levels for 2005, 2015 and 2025,
24 including the emissions specifically attributable to operation of the interchange, but the emissions
25 specific to interchange operations were not separately stated. (See AR, pp. 170-171, 2238-2239,
26 8525-8540.) Interchange-specific emissions were necessarily calculated and taken into account
27 in the computer-modeled estimates of regional ROG and NOx emissions on which the
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1 transportation conformity determination was based, but the conformity determination apparently
2 did not provide a separate statement of the interchange-specific emissions.¹³

3 Traditionally, CEQA analysis of air quality impacts *does* include the calculation and
4 presentation of emissions data specific to the project under review. The significance of those
5 project-specific emissions data, however, is properly determined in the context of the project's
6 setting and requires consideration of the collective emissions of the project and other emission
7 sources in the area or region where the project is located; consideration of the project-specific
8 emissions data, either in comparison with or in isolation from the emissions of other area
9 sources, sheds no light on the significance of the project-specific emissions for air quality in the
10 project region under CEQA.. (See *Kings County, supra.*) Thus the significance of
11 interchange-specific emissions for air quality in the Sacramento nonattainment area could not
12 adequately be determined under CEQA by considering the emissions in isolation, by comparing
13 them to the ROG and NOx emissions from existing and planned transportation facilities, or even
14 by comparing them to the regional SIP mobile source emissions budgets for ROG and NOx.
15 (*Ibid.*) An adequate determination of the significance of the emissions under CEQA would
16 require their consideration collectively with the emissions of other mobile sources in the
17 Sacramento regional setting. (*Ibid.*) The transportation conformity determination of the
18 Rancheria interchange was based upon such a collective consideration.

19 Accordingly, the issue raised by the lack of separately stated data specifying the ROG
20 and NOx emissions from operation of the interchange of in the EIR is not the adequacy of the
21 transportation conformity determination as a method of determining the significance of the
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23 ¹³ There is no indication in the administrative record of whether the computer models used for the
24 transportation conformity determination can separately present the calculated ROG and NOx emissions attributable
25 to interchange operations. Documentation of the computer modeling underlying the transportation conformity
26 determination was provided to members of the public in a separate process conducted by the BIA under requirements
27 of the Clean Air Act for conformity determinations. (AR, pp. 1090, 8271-8281, 8450-8468.) That documentation
28 included a letter report dated November 27, 2001, which contained greater detail about the underlying computer
modeling than was discussed in the text of the EIR or described in the technical study on project air quality impacts
performed for the EIR. (AR, pp. 169-171, 2237-2239, 8521-8542.) The greater detail consists of the "output files"
from the computer modeling for the conformity determination, setting forth emissions data for the Sacramento
nonattainment area. The data collectively state the estimated emissions from all regional mobile sources, including
the interchange, in 2005, 2015 and 2025. No data specific to emissions associated with operation of the interchange
is presented.

1 emissions for air quality under CEQA. Rather the issue is whether, without a presentation of
2 interchange-specific emissions data in the EIR, sufficient information about the analysis
3 underlying the conformity determination was provided in the EIR to permit informed
4 decisionmaking and informed public participation in the process for approval of the interchange.
5 (See CEQA Guidelines, § 15151 ("An EIR should be prepared with a sufficient degree of
6 analysis to provide decisionmakers with information which enables them to make a decision
7 which intelligently takes account of environmental consequences."); *Association of Irrigated*
8 *Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391-1392, 1398 (omission of
9 information about project impacts is a prejudicial violation of CEQA disclosure requirements
10 only if it precludes informed decisionmaking and informed public participation).)

11 The court finds that such informed decisionmaking and informed public participation
12 was permitted by and took place on the basis of the information presented about the conformity
13 determination in the EIR process without the presentation of interchange-specific emissions data.
14 (See, e.g., 1044-1045, 1058, 1078-1079, 1085-1089.) Therefore, although the court believes it
15 may well be desirable to also include project specific emission data, the court concludes that
16 CEQA informational requirements were met by the presentation and discussion of the
17 transportation conformity determination in the EIR.¹⁴

18 With respect to the use of EMFAC7F to estimate motor vehicle emission rates for the
19 transportation conformity determination, the court finds no inadequacy. According to petitioners,
20 use of EMFAC7F violated CEQA requirements for the disclosure of accurate information in the
21 decisionmaking process because EMFAC7F did not account for the increase in the relative
22 portion of the vehicle fleet mix made up of higher-emitting sport utility vehicles and light trucks
23 after development of EMFAC7F; use of EMFAC7F with these outdated assumptions about fleet

24 ¹⁴ In reaching this conclusion, the court does not seek to discourage the presentation of emissions data
25 specific to interchange operations if those data are reasonably available. The court is concluding only that the
26 presentation of the interchange-specific data is not required if the presentation is not needed for informed
27 decision-making and informed public participation regarding the significance of the interchange's air quality impacts.
28 If the informational needs of the decisionmakers and public can be reasonably satisfied by presentation of the
regional transportation conformity data, which includes the data for the interchange, CEQA disclosure requirements
are met. Here, the regional conformity data may provide a particularly appropriate means of understanding the
impact of interchange operations on air quality: as respondent points out, given the transient and generalized nature
of ozone and its precursors, a regional approach may be essential to an adequate air quality impact analysis.

1 mix produced an underestimate of vehicle emissions associated with interchange operations in
2 the conformity determination; and this underestimate led to inaccurate information about the
3 interchange's air quality impacts in the EIR. In a detailed response to such comments in the EIR
4 process for the interchange, Caltrans persuasively explained the methodological reasons for using
5 EMFAC7F instead of an updated version and disagreed with petitioners' claim that the emissions
6 projections generated with the use of EMFAC7F were inaccurate. (See AR, pp. 1079,
7 1087-1089.)

8 From November 2001 when the conformity determination was prepared through
9 2002 when Caltrans completed its responses to comments on the EIR (AR, pp. 1983, 8521), the
10 EMFAC7F was approved by CARB and generally accepted and used by agencies responsible for
11 transportation conformity determinations like SACOG. (*Ibid.*) In addition, an updated version,
12 EMFAC2001, could not be used because it lacked approved input values for vehicle fleet mix
13 and because emissions budgets based on the updated version had not been developed. (AR,
14 pp. 1099-1089.) EMFAC7F was the most current version available for use at the time.

15 Significantly, petitioners provided only conclusory statements in support of their
16 comments in the EIR process that use of EMFAC7F in the conformity determination produced
17 inaccurate results. They did not provide any data or analysis to cast doubt on the Caltrans'
18 responses, based on extensive knowledge and experience in the use of EMFAC7F, that the
19 emissions forecasts modeled with EMFAC7F were adequate, that EMFAC7F was the only
20 computer model reasonably available when the conformity determination was completed, and
21 that EMFAC7F was still approved, accepted and used at the time by specialists in air quality
22 analysis. In this proceeding, petitioners have pointed to no data or analysis in the administrative
23 record to demonstrate that the fleet mix assumptions of EMFAC7F significantly affected the
24 accuracy of the conformity determination. In these circumstances, the court must defer to
25 Caltrans' choice of the best methodology available when the conformity determination was done.
26 (See *Greenbaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 412.)

27 Petitioners' related and overarching claim, that the El Dorado CEQA Guide provided
28 the appropriate thresholds for determining the significance of ROG and NOx emissions from

1 interchange operations, is without merit. Petitioners contend that, unlike the ROG and NOx
2 mobile source emissions budgets used for the transportation conformity determination, the ROG
3 and NOx thresholds of significance in the Guide are quantitative emissions levels developed
4 specifically for CEQA determinations of significance in El Dorado County where the interchange
5 is located; the thresholds reflect the severity of the County's air quality problems related to ozone
6 and the need for control of ozone precursors through the County's air quality control program.
7 Moreover, according to petitioners, the ROG and NOx thresholds in the Guide, applied to
8 URBEMIS7G data in Appendix E to the EIR, establish the significance of the air quality impact
9 of ROG and NOx emissions associated with interchange operations.

10 The El Dorado CEQA Guide was adopted in February 2002, while the air quality
11 impact analysis for the Rancheria interchange was being prepared and several months before the
12 draft EIR was noticed for review. In commenting on the air quality analysis in the draft EIR, the
13 County indicated that its CEQA Guide provided the appropriate thresholds for assessing the air
14 quality impacts of the interchange. (AR, pp. 1044, 1075.) In responding to the County's
15 comments, Caltrans provided convincing reasons for using a transportation conformity
16 determination rather than the thresholds of significance in the El Dorado CEQA Guide to assess
17 the significance of the air quality impacts of the interchange. (AR, pp. 1085-1087, 1089, 1058.)

18 Unlike the thresholds of significance for ROG and NOx emissions in the El Dorado
19 CEQA Guide, the mobile source ROG and NOx emissions budgets in the SIP are directly
20 applicable to the air quality impacts expected to result from interchange operations: The
21 interchange is a transportation facility located in a portion of El Dorado County that is within the
22 Sacramento area designated as nonattainment for national and state ozone standards. The mobile
23 source emissions budgets are specifically set in the SIP for the Sacramento nonattainment area on
24 the basis of the Sacramento Area Regional Ozone Attainment Plan, which was prepared and
25 adopted by El Dorado County Air Pollution Control District and four other air quality
26 management districts. The emissions budgets constitute the allowable levels of ROG and NOx
27 mobile source emissions in the Sacramento nonattainment area that are consistent with the area's
28 attainment of at least the national ozone standard in 2005. And the budgets are related to federal,

1 state and regional control strategies for reduction of ROG and NOx emissions in the Sacramento
2 nonattainment area.

3 In contrast, the thresholds of significance for ROG and NOx emissions in the
4 El Dorado CEQA Guide were designed for stationary emissions sources on the basis of state
5 statutory requirements for pollution control district air quality attainment plans. (El Dorado
6 CEQA Guide, § 3.3.2. See Health & Saf. Code, § 40919.) The Guide provides no rationale for
7 its note that "although these thresholds are based on criteria used for stationary sources, they are
8 applied in these guidelines to the total emissions from proposed projects, including stationary,
9 area, and mobile source emissions." (El Dorado CEQA Guide, § 3.3.2.) In addition, the
10 mitigation measures recommended in the Guide for projects exceeding the thresholds of
11 significance are also largely geared for stationary sources and not transportation facilities like the
12 Rancheria interchange. (El Dorado CEQA Guide, Appendix E.)

13 Given the relatively attenuated applicability of the ROG and NOx thresholds in the
14 El Dorado CEQA Guide to the air quality impacts of the interchange, the appropriateness of
15 using the thresholds to demonstrate the significance of the impacts is diminished. This is
16 particularly true with respect to petitioners' attempted application of the thresholds to the
17 URBEMIS7G data in Appendix E to the EIR for the interchange. (AR, pp. , 678-679.) Those
18 data provided provisional estimates of the ROG and NOx emissions from traffic associated with
19 the Rancheria hotel and casino project; the data were modeled during the preparation of the EA
20 for the hotel and casino but not ultimately used in the EA's air quality impacts analysis; then the
21 data were mistakenly included in Appendix E to the EIR for the interchange without mention in
22 the discussion of operational air quality impacts in the EIR. (See AR, p. 1058.) Thus the data
23 were effectively discarded and their relationship to interchange operations, if any, became a
24 matter of speculation. The data cannot be properly used to demonstrate the significance of the air
25 quality impacts of the interchange operations even though they showed traffic-related ROG and
26 NOx emissions significantly in excess of the thresholds of 82 pounds per day in the El Dorado
27 CEQA Guide and even though the EIR for the interchange indicated that emissions from casino
28

1 traffic comprised the majority of the ROG and NOx emissions to be expected from the operation
2 of the interchange. (See AR, pp. 118 (casino traffic volumes).)

3 Because the mobile source ROG and NOx emissions budgets are directly applicable
4 to the air quality impacts of the interchange, it was reasonable for Caltrans to use the budgets
5 rather than the ROG and NOx thresholds in the El Dorado CEQA Guide to determine the
6 significance of the impacts. The thresholds in the Guide were not legally binding on Caltrans
7 and their applicability to the significance determination was relatively attenuated.

8 In one important respect, the transportation conformity determination for the
9 Rancheria interchange may not have provided an adequate method for determining the
10 significance of the Rancheria interchange's air quality impacts under CEQA. As petitioners point
11 out, the SIP focuses almost exclusively on attainment of the national ozone standard and makes
12 minimal mention of the more stringent state ozone standard. The mobile source ROG and NOx
13 emissions budgets set in the SIP are said to constitute ROG and NOx emissions levels expressly
14 permitting attainment of the national ozone standard alone. There is no indication that the more
15 stringent state ozone standard was considered by CARB when it set these budgets. If that is the
16 case, the conformity determination could not have satisfied a substantial portion of the tests of
17 significance for air quality impacts in the CEQA Guidelines and the intent of CEQA to broadly
18 protect the environment. (See CEQA Guidelines, Appendix G, III, b), c). *Friends of Mammoth*
19 *v. Board of Supervisors* (1972) 8 Cal.3d 247, 259, 262.) The conformity determination could not
20 have answered whether the interchange would b) violate *any* air quality standard or contribute
21 substantially to an existing or projected air quality violation. Nor could the conformity
22 determination have answered whether the interchange would c) result in a cumulatively
23 considerable net increase of any criteria pollutant (e.g., ozone) for which the project region is
24 nonattainment under an applicable federal *or state* ambient air quality standard.¹⁵

25
26
27 ¹⁵ Contrary to the assertion of respondent, real parties and intervenor, the use of the disjunctive in
28 section III b) of Appendix G does not reasonably indicate a choice between applicable federal and state ambient air
quality standards. The disjunctive indicates a concern with nonattainment, whether it occurs under federal or state
standards. The concern is consistent with CEQA's intent to broadly protect the environment.

Appendix B to the Sacramento Area Regional Ozone Attainment Plan does indicate a possibility that the SIP and emissions budgets took the state ozone standard into account. Appendix B states: "This plan has been prepared primarily to satisfy the requirements of the federal Clean Air Act. However, the districts in the Sacramento region are also required to submit a triennial update to the 1991 air quality plans required by the California Clean Air Act (CCAA). This update is due to the ARB by December 31, 1994. To avoid duplication, the ARB has proposed that districts use the November 1994 federal ozone attainment plans to meet state requirements, whenever possible. Consequently, this plan is intended to satisfy both federal and state planning requirements." It is not clear, however, whether the regional carrying capacities for ROG and NOx emissions specified in Appendix E to the Sacramento Area Regional Ozone Attainment Plan (p. E-5) took the state ozone standard into account along with the national ozone standard. It is also not clear whether CARB, when setting the mobile source ROG and NOx emissions budgets in the SIP for the Sacramento area on the basis of the regional carrying capacities, took both the state and national standards into account. The absence of any reference to the state standard with respect to either the carrying capacities or the emissions budgets strongly implies that the state standard was not taken into account.

Accordingly, to ensure that the analysis of the interchange's operational air quality impacts is adequate, this matter must be remanded to Caltrans for clarification of whether the mobile source ROG and NOx emissions budgets for the Sacramento nonattainment area constitute levels of ROG and NOx that permit attainment of the state ozone standard. If, after an appropriate analysis, Caltrans determines that the emissions budgets do not constitute such levels, Caltrans must undertake further analysis of the interchange's operational air quality impacts to determine whether they would be significant under tests b) and c) in Appendix G to the CEQA Guidelines with respect to the state ozone standard or under another suitable method of determining significance. If significance is found by either method, Caltrans must adopt, in accordance with CEQA requirements, feasible mitigation measures to avoid or minimize the impacts to an insignificant level.

Construction-Related Emissions

1 The EIR analysis of emissions related to the construction of the Rancheria
2 interchange used methodology specified by the Sacramento Metropolitan Air Quality
3 Management District to determine that the ROG, NOx and particulate emissions generated by the
4 construction of the interchange would have a significant air quality impacts. (AR, pp. 166-168,
5 651-652, 2003-2005, 2235-2237.) The analysis calculated the levels of emissions, determined
6 that the levels exceeded the district's thresholds of significance, calculated the reductions in the
7 levels produced by the specified mitigation measures, and determined that the reduced levels
8 were below the thresholds of significance.¹⁶

9 This EIR analysis is reasonably clear and detailed. Contrary to petitioners'
10 contentions, the mitigation measures are stated with sufficient specificity to be enforceable.

11 Other Environmental Impacts

12 Petitioners Voices for Rural Living and Shingle Springs Neighbors for Quality
13 Living (Voices and Neighbors) contend that the analysis in the EIR for the Rancheria interchange
14 failed to adequately assess the environmental impacts of the interchange related to traffic, water
15 quality, biological resources, soil, noise, aesthetics, rural amenities, and socioeconomic
16 development. Petitioner El Dorado County contends that the EIR failed to adequately assess the
17 impacts of the interchange on water supply. The court has carefully reviewed the administrative
18 record and the parties' briefs in light of these contentions and has concluded that the contentions
19 lack merit.

20 Petitioners' contentions are largely directed at impacts resulting from the
21 development and operation of the hotel and casino on the Rancheria, matters outside the
22 description of the interchange project and beyond Caltrans' jurisdiction to review under CEQA

23 ¹⁶ In addition to this significance and mitigation analysis, the EIR contained a general conformity
24 analysis for the construction-related emissions of the interchange pursuant to the federal Clean Air Act. (AR,
25 pp. 168-169, 651.) That analysis was conducted to determine the need for a *general* conformity determination, i.e., a
26 determination of whether the construction-related emissions would interfere with the SIP for attaining national
27 ambient air quality standards in the region. Because the construction-related emissions were found to be below the
28 de minimis emissions thresholds set by the EPA to determine whether a conformity determination was required, the
EIR concluded that a general conformity analysis was unnecessary. This general conformity analysis was distinct
from the transportation conformity determination made for the air quality impacts of the interchange's operations and
independent of the significance and mitigation analysis of construction-related emissions using the methodology and
thresholds of significance of the Sacramento Metropolitan Air Quality Management District. There is no meaningful
challenge to this general conformity analysis in this proceeding.

1 pursuant to Government Code section 12012.5, subdivision (f). Rather, these on-site impacts of
2 the hotel and casino are subject to environmental assessment under NEPA and federal judicial
3 review of the adequacy of that assessment.¹⁷

4 To the extent that petitioners' contentions concern the impacts caused by the
5 interchange, the contentions disregard the EIR discussion and supporting technical studies that do
6 analyze the impacts as well as Caltrans' responses to comments on the draft EIR. Alternatively,
7 petitioners' contentions unsuccessfully dispute the accuracy of the EIR and supporting technical
8 studies.

9 For example, with respect to the analysis of traffic-related impacts, petitioners
10 contend that the methodology and assumptions used to estimate trip rates generated by the
11 interchange and casino were flawed, that the impacts to local roads were analyzed only with
12 respect to those roads nearby the interchange project; and that the high level of congestion
13 already present on Highway 50 was not adequately considered. However, a review of the
14 detailed analysis of traffic impacts in the EIR (AR, pp. 110-156) and the thorough traffic study
15 prepared for the EIR (AR, pp. 2681-2878) reveals a substantial basis for the methodology and
16 assumptions used in estimating trip rates. (AR, pp. 119-130, 2713-2742.) The analysis of
17 impacts to local roads extended beyond those roads near the interchange project, but only the
18 local roads showing significant impacts were listed in the EIR and technical study. (AR,
19 pp. 140-144, 152-156, 2698-2699, 2707, 2767-2768.) And the EIR and technical study
20 acknowledged and gave full consideration to the existing congestion on Highway 50 in the
21 context of the analysis of impacts to local roads. (*Ibid.*) Indeed, a fair share contribution by the
22 Tribe to mitigate congestion on Highway 50 was adopted by Caltrans when it certified the EIR
23 and approved the interchange project. (AR, pp. 1987, 2003, 2013-2015,)

24 Thus the EIR's analysis of traffic impacts was clearly sufficient and supported by
25 substantial evidence. The court's review of the administrative record reveals a similar sufficiency

26
27 ¹⁷ From the perspective of this court, it may well be desirable that state-tribal compacts be renegotiated
28 to specifically require CEQA review of off-site and on-site environmental impacts. The renegotiated provision
should be more demanding than section 10.8 of the compact regarding the CEQA review of the off-site impacts for
the Rancheria hotel and casino.

1 and substantiality for the other analyses in the EIR of environmental impacts resulting from the
2 interchange. Accordingly, the court finds no basis for setting aside those analyses. (See *San*
3 *Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102
4 Cal.App.4th 656, 696.)

5 **Project Alternatives**

6 Petitioners Voices and Neighbors contend that the EIR failed to analyze a reasonable
7 range of alternatives to the interchange project, as required by CEQA Guideline section
8 15126.6(c). Petitioners assert that, in addition to the no project alternative and the two
9 interchange design alternatives analyzed in the EIR, CEQA required an analysis of an
10 interchange at another location, a method of providing public access to the Rancheria by means
11 other than an interchange with Highway 50, and development of a smaller hotel and casino not
12 requiring the extent of access provided by the interchange project.

13 Petitioners' suggested alternatives do not qualify as reasonable alternatives to the
14 interchange project for purposes of CEQA. As the EIR explained, two of the suggested
15 alternatives were considered in initial project studies but rejected because they either fail to
16 accomplish most of the project purpose or are legally infeasible. (See CEQA Guideline,
17 § 126.6(c).) An interchange at a different location would fail to meet the basic project object of
18 providing direct access to the Rancheria to permit economic development of the property, while a
19 frontage road extending from existing interchanges with Highway 50 to the Rancheria would
20 require the acquisition of existing residential properties owned by project opponents, likely
21 through a difficult condemnation process. (AR, pp. 81-83.) Similarly, a project alternative based
22 on a smaller casino would be beyond the jurisdiction of Caltrans and legally infeasible.

23 The court finds no basis for concluding that the EIR failed to analyze a reasonable
24 range of alternatives.

25 **Reliance on Unadopted County General Plan**

26 Petitioners Voices and Neighbors contend that the EIR failed to determine the
27 consistency of the interchange project with a general plan validly adopted by El Dorado County,
28 as required by CEQA Guidelines section 15125(d) and *County of Amador v. El Dorado County*

1 *Water Agency* (1999) 76 Cal.App.4th 931, 949-951. Petitioners point out that the 1996
2 El Dorado County General Plan discussed in the EIR had been invalidated by a superior court,
3 hence was unavailable for a consistency determination pursuant to section 15125, and was
4 improperly used for the cumulative impacts analysis pursuant to *County of Amador*.

5 Petitioners' contention does not take into account the requirement of CEQA
6 Guideline section 15125(d), that an EIR discuss inconsistencies of a proposed project with
7 *applicable* general plans and regional plans. Here, the location of the interchange project entirely
8 on federal and state land makes the land uses set forth in a general plan for El Dorado County
9 inapplicable to the interchange. The applicable land use plan and controls are the land use plan
10 adopted by the Tribe for the Rancheria and the Highway 50 ROW (right of way) for
11 transportation facilities. (AR, p. 91, 95.) The interchange would be consistent with both the
12 Tribe's land use plan and the ROW. (AR, p. 96.)

13 Further, the need for the interchange, to provide direct and unrestricted access to the
14 Rancheria necessary for the Tribe's economic development of that property would not depend on
15 planned development in a general plan for El Dorado County as was the situation in *County of*
16 *Amador*. In that case, a project for the development of a water supply had been premised upon a
17 need to meet population growth called for in a draft general plan and was found to circumvent
18 adequate consideration of policies to restrict growth. Here, the interchange would implement the
19 Tribe's adopted land use plan for economic development of the southwest portion of the
20 Rancheria. (AR, p. 96.)

21 The discussion in the EIR of the invalidly adopted El Dorado County General Plan is
22 limited to a description of the low density residential land use designation in the plan that would
23 otherwise apply to a portion of the interchange project site, the non-jurisdictional land use
24 designation in the plan applicable to the Rancheria, and the potential environmental impacts of a
25 revision of the plan in the interchange's cumulative setting. (AR, pp. 91, 93, 294-295.) The EIR
26 does not base the interchange on inapplicable land uses in the invalidly adopted 1996 El Dorado
27 General Plan or in a pending revision of that plan.

28 **Enforceability of Mitigation Measures**

1 Petitioners contend that the measures adopted by Caltrans to mitigate significant
2 environmental impacts of the interchange will not be enforceable in accordance with the
3 requirement of CEQA, that mitigation measures be fully enforceable through permit conditions,
4 agreements or other legally binding instruments. (See Pub. Resources Code, § 21081.6,
5 subd. (b); CEQA Guidelines, § 15126.4 (a)(2).) According to petitioners, the sovereign
6 immunity of the Tribe, which is responsible for implementation of most of the measures, will bar
7 enforcement.

8 Tribal sovereign immunity can present a barrier to the enforcement of a state law
9 against a tribe or a contractual agreement to which a tribe is a party. (See *Kiowa Tribe v.*
10 *Manufacturing Techs., Inc.* (1998) 523 U.S. 751; *Oklahoma Tax Comm'n v. Citizen Band*
11 *Potawatomi Indian Tribe* (1991) 498 U.S. 505. However, the measures adopted by Caltrans to
12 mitigate the significant impacts of constructing and operating the interchange are structured in a
13 way that rules out any issue of tribal sovereign immunity in the implementation and enforcement
14 of the measures. As set forth in the Mitigation Monitoring and Reporting Plan (MMRP) adopted
15 by Caltrans for the interchange project, the construction and operation of the interchange will be
16 conditioned on compliance by the Tribe or its contractor with applicable mitigation measures.
17 (See AR, pp. 1999-2015.) As set forth in the MMRP, each of the mitigation measures will be
18 incorporated into the plans and specifications for the interchange that Caltrans must approve
19 before construction begins. Then the compliance of the Tribe or its contractor with the approved
20 plans and specifications, including the incorporated mitigation measures, will be monitored for
21 compliance during construction, which cannot proceed in the absence of compliance with the
22 plans and specifications.¹⁸ (See Highway Development and Encroachment Agreement, § III,
23 paras. 8-9.)¹⁹

24
25 ¹⁸ Petitioners additionally seem to contend that Caltrans lacks authority to enforce the mitigation
26 measure for asbestos hazards occurring during construction of the interchange. That measure requires compliance
27 with the requirements of an El Dorado County ordinance on naturally occurring asbestos and dust protection. (AR,
28 p. 2001.) Although Caltrans may not have authority to enforce the County's ordinance, nothing appears to prevent
Caltrans from using the requirements of the ordinance as the substance of a mitigation measure and enforcing that
measure..

¹⁹ The court takes judicial notice of the Highway Development and Encroachment Agreement attached
as Exhibit F to Petitioner El Dorado County's Request for Judicial Notice filed May 2, 2003.

1 One of the mitigation measures involves a fair share contribution that the Tribe will
2 make for the construction of auxiliary lanes on Highway 50 to mitigate traffic impacts of the
3 interchange on a segment of the highway. (AR, pp. 1987, 2003, 2013-2015.) The Tribe has
4 committed to this fair share contribution by resolution of its council in May 2002 pursuant to its
5 Off-Reservation Environmental Impact Ordinance adopted in accordance with section 10.8 of the
6 tribal-state compact. (AR, pp. 1976-1980, 2013, 2992-2994.) Pursuant to the Tribe's resolution
7 and the mitigation measure adopted for the interchange, the Tribe must open an interest-bearing
8 account for the fair share contribution before grading of the site for the interchange will be
9 authorized to begin. (AR, pp. 2004.) In addition, failure by the Tribe to make deposits into the
10 account could breach its obligation under section 10.8 of the compact to ensure adequate
11 mitigation of off-reservation impacts of the hotel and casino project and invoke remedies by the
12 state pursuant to section 10.8.3 of the compact. (AR, pp. 2993-2994.)

13 Maintenance of the interchange after construction and during operation will be
14 governed by an agreement that BIA will enter with Caltrans pursuant to the portion of the Federal
15 Lands Highways Program related to the IRR system (23 U.S.C., § 204(a); 25 C.F.R., Part 170,
16 § 170.7) and the Indian Self Determination and Education Assistance Act (Public Law 93-638,
17 25 U.S.C., § 450 et seq.). (See Highway Development and Encroachment Agreement, § I,
18 para. 26(d).) this maintenance agreement must be in place prior to the opening of access to
19 Highway 50. (*Ibid.*) Both BIA and Caltrans have committed to incorporate the applicable
20 mitigation measures into this maintenance agreement. (AR, pp. 923, 2000, 6383, 6386.)

21 The court concludes, accordingly, that tribal sovereign immunity will not bar
22 enforcement of the mitigation measures adopted by Caltrans for the interchange project.
23 Sufficient agreements and legally binding instruments will ensure compliance by the Tribe or its
24 contractor with the mitigation measures.

25
26 For the foregoing reasons, the petitions in these consolidated proceedings are denied
27 in all respects except one. The petitions are granted to the extent that the transportation
28 conformity determination used to determine the significance of the air quality impact of

1 interchange operations may not have considered the impact on attainment of the state ambient air
2 quality standard for ozone. Counsel for respondent, real parties and intervenor is directed to
3 prepare, serve on all parties and submit to the court a proposed judgment and a proposed writ of
4 mandate consistent with this ruling. In particular, the writ shall require respondent to take the
5 following actions:

6 (1) Set aside the certification of the EIR with respect to its analysis of the air quality
7 impact of interchange operations and decide whether to take the corrective actions specified
8 below in (2), (3), and (4), as necessary;

9 (2) Clarify through an appropriate analysis whether the mobile source ROG and NOx
10 emissions budgets for the Sacramento nonattainment area constitute levels of ROG and NOx that
11 permit attainment of the state ozone standard;

12 (3) If the analysis establishes that the emissions budgets do not constitute levels of
13 ROG and NOx that permit attainment of the state ozone standard, undertake further analysis of
14 the interchange's operational air quality impact to determine whether the impact would be
15 significant with respect to the attainment of the state ozone standard; whether any significant
16 impact could feasibly be mitigated to a level of insignificance; and whether a statement of
17 overriding considerations should be adopted;

18 (4) Take the actions in (2) and (3) in accordance with the substantive and procedural
19 requirements of CEQA necessary to certification of the EIR; and

20 (5) File a return in this court upon completion of the actions in (1), (2), (3), and (4),
21 as necessary, to specify what has been done to comply with the writ.

22 Dated: JAN 2 2004 nunc pro tunc to DEC 31 2003

LLOYD G. CONNELLY

LLOYD G. CONNELLY
JUDGE OF THE SUPERIOR COURT

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(3))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **AMENDED RULING ON SUBMITTED MATTER** by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: January 2, 2004

Superior Court of California,
County of Sacramento

By: B. BEDDOW
Deputy Clerk

***COURT OF APPEAL DECISION
(NOVEMBER 8, 2005)***

RECEIVED

NOV - 9 2005

Morrison & Foerster

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

COUNTY OF EL DORADO,

Plaintiff and Appellant,

v.

DEPARTMENT OF TRANSPORTATION et al.,

Defendants and Respondent;

LAKES ENTERTAINMENT, INC.,

Real Party in Interest and
Respondent;

SHINGLE SPRINGS BAND OF MIWOK
INDIANS, et al.,

Intervenors and Respondents.

C046372,
C048141

(Super. Ct. No. 03CS000003)

FILED

NOV - 8 2005

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk

BY _____ Deputy

VOICES FOR RURAL LIVING et al.,

(Super. Ct. No. 03CS00018

Plaintiffs and Appellants,

v.

DEPARTMENT OF TRANSPORTATION,

Defendant and Appellant;

SHINGLE SPRINGS BAND OF MIWOK INDIANS
et al.,

Real Parties in Interest and
Appellants.

APPEAL from a judgment of the Superior Court of Sacramento County, Lloyd G. Connelly, Judge. Affirmed in part and reversed in part.

Louis B. Green, County Counsel, Edward L. Knapp, Assistant County Counsel; The Diepenbrock Law Firm, Diepenbrock Harrison, Mark D. Harrison, Michael V. Brady, Andrea A. Matarazzo and Michael E. Vinding for Plaintiff, Appellant and Respondent County of El Dorado.

Law Offices of Stephan C. Volker, Stephan C. Volker and Joshua A.H. Harris for Plaintiff, Appellant and Respondent Voices for Rural Living and Shingle Springs Neighbors for Quality Living.

Sonnenschein Nath & Rosenthal, Nicholas C. Yost, Paula M. Yost and Kathleen Boergers; Brigit S. Barnes & Associates, Brigit S. Barnes and Karin E. Schwab; Clement, Fitzpatrick & Kenworthy and Anthony Cohen for Intervener and Appellant Shingle Springs Band of Miwok Indians and Real Party in Interest and Appellant Lakes Entertainment, Inc.

Morrison & Foerster, Michael H. Zischke, Donna R. Black, David C. Levy and R. Chad Hales for Defendant and Appellant Department of Transportation.

Morrison & Foerster, Michael H. Zischke, Donna R. Black and David E. Levy; Sonnenschein Nath & Rosenthal, Nicholas C. Yost and Paula M. Yost for Defendant and Respondent Department of Transportation, Intervener and Respondent Shingle Springs Band of Miwok Indians and Real Party in Interest and Respondent Lakes Entertainment, Inc.

Brigit S. Barnes & Associates, Brigit S. Barnes and Karin E. Schwab for Intervener and Respondent Shingle Springs

Band of Miwok Indians and Real Party in Interest and Respondent Lakes Entertainment, Inc.

Clement, Fitzpatrick & Kenworthy and Anthony Cohen for Intervener and Respondent Shingle Springs Band of Miwok Indians.

The Shingle Springs Band of Miwok Indians (the Tribe) is a federally recognized tribe consisting of 334 individuals, 18 of whom reside on the Tribe's 160-acre rancheria (the Rancheria) located in El Dorado County, a short distance from Highway 50, but without a vehicle interchange nearby. In 2000, California voters approved a change to the state Constitution that granted groups of Native Americans such as the Tribe a monopoly to operate and financially benefit from Nevada-style casino gaming in the state. (Cal. Const., art 4, § 19 (f).)

Seeking to fully realize the benefits of its constitutional prerogative, the Tribe has proposed the construction of a casino and hotel complex and adjacent parking structure on its Rancheria, and a freeway interchange on nontribal property connecting the Rancheria directly to Highway 50. The size of the proposed development is vast in comparison to other development in the county and region. The 381,500 square-foot casino and hotel alone exceeds the size of Sacramento's Convention Center, and the 3,000-vehicle parking facility will accommodate far more vehicles than the parking facility at the El Dorado County Fairgrounds.

Our role here is not to address questions concerning the wisdom, policy implications, or economics of allowing Nevada-style gaming on Indian land in California. This state's voters have already done so. What we have been asked by the parties to

resolve is whether sufficient information has been disclosed about the project for decisionmakers and the public to understand the potential environmental impacts of constructing the interchange. We conclude that while much of the necessary information has been properly disclosed, there remain two required categories of information that have yet to be adequately set forth in the environmental impact report (EIR): one concerns the project's potential impact on air quality, and the other concerns the impact of an alternative smaller casino and hotel.

This action under the California Environmental Quality Act involves two appeals, which we have consolidated.¹ In the first appeal, the appellants challenge an EIR that the Department of Transportation (Caltrans) used to approve the freeway interchange project on U.S. Highway 50.

Appellant County of El Dorado (County) challenges the EIR's air quality analysis. We agree with County that, by analyzing the project's traffic-based air quality impacts exclusively in the context of a regional transportation conformity approach, the EIR failed to provide adequate information regarding the project's individual air quality impacts. To be sufficient, the EIR will have to disclose and analyze what the interchange/hotel-casino's specific traffic-based ROG and NOx emissions (or estimates) are, what their contributions to the

¹ Public Resources Code section 21000 et seq. (CEQA).

regional emissions budgets are, and whether these emissions and contributions are significant (for example, in comparison to other existing or planned projects within the transportation conformity analysis).

Appellants Voices for Rural Living and Shingle Springs Neighbors for Quality Living (Voices) challenge the EIR on numerous other grounds, including project segmentation, environmental impacts, alternatives, and public input. We agree with Voices' challenge regarding the EIR's failure to consider the alternative of a smaller casino and hotel. The EIR must consider and analyze the alternative, or alternatives, of a smaller hotel and casino complex.

In the second appeal, Caltrans, the Tribe, and Lakes Entertainment appeal from an order finding that Caltrans' return to the peremptory writ of mandate was inadequate on the issue of whether the transportation conformity approach met the state air quality standard for ozone. We agree with these parties that we are precluded from considering this issue because County and Voices failed to exhaust their administrative remedies regarding it.

BACKGROUND

The Tribe and its reservation, the Shingle Springs Rancheria, are federally recognized; the reservation is held in trust by the Bureau of Indian Affairs (BIA) for the Tribe's benefit. (25 U.S.C. § 479a-1.)

The U.S. Highway 50 interchange project will provide the Tribe with direct access to its property, which is close to Highway 50.

The Tribe is paying for the cost of the interchange. The proposed interchange design, a "flyover" (fly over the highway) design to provide access to the Rancheria while minimizing other development, will be built entirely within Caltrans' Highway 50 right-of-way and a five-acre parcel leading up to the Rancheria; County has no jurisdiction within the boundaries of the proposed interchange.

According to County, the hotel and casino complex will be one of the largest commercial developments in the county, both in size and traffic generation. The complex will occupy 44 acres of the 160-acre Rancheria, employ around 1,500 persons, and include a 238,500 square-foot casino, a five-level, 250-room, 143,000 square-foot hotel, and parking to accommodate 3,000 cars (including a five-level parking structure).

Caltrans approved the interchange project based on a final "Environmental Impact Report [EIR]/Environmental Assessment [EA]." This is a joint document prepared pursuant to CEQA and the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). (See Cal. Code Regs., tit. 14, §§ 15170, 15222, 15226 [requiring or encouraging preparation of joint CEQA/NEPA documents]; the CEQA Guidelines (tit. 14, Cal. Code Regs., § 15000 et seq.), binding on all state agencies, are regulatory guidelines that implement CEQA--*Citizens of Goleta Valley v.*

Board of Supervisors (1990) 52 Cal.3d 553, 564, fn. 3 (*Citizens of Goleta Valley*).)

The National Indian Gaming Commission (NIGC), working with the BIA, drafted the EA portion of the final EIR/EA; this portion focused on the on-reservation and related impacts of the proposed hotel and casino project. Caltrans and the BIA then prepared the final EIR/EA for the interchange project, with Caltrans acting as the lead agency for the CEQA analysis and the BIA acting as the lead agency for the NEPA analysis.

The EA imposed mitigation measures on the hotel and casino project covering soil erosion, water resources, air quality, biological resources, noise and visual resources. In light of these measures, the hotel and casino project was found to have no significant impact. This meant that an environmental impact statement for the hotel and casino under NEPA was not required.

Caltrans and the BIA subsequently approved the final EIR/EA as to the interchange project. In the final EIR, Caltrans used a three-step approach. First, Caltrans independently analyzed and incorporated the EA; using that information, Caltrans generally analyzed the environmental impacts of the hotel and casino as indirect impacts of the interchange project. Then Caltrans took the analysis to a second level. Caltrans analyzed the interchange and hotel/casino together as to the traffic-related noise, air quality and transportation impacts; this is because Caltrans acknowledged that "the casino development [would] comprise nearly all of the traffic volumes for the interchange." Finally, Caltrans prepared its own analyses

regarding growth-inducing impacts and cumulative impacts of the interchange and hotel/casino. After imposing various mitigation measures, Caltrans concluded the interchange would not result in any significant and unavoidable adverse impacts to the environment.

County and Voices filed petitions for writ of mandate challenging the adequacy of the final EIR/EA under CEQA. (The appeals here involve CEQA challenges to the EIR drafted by Caltrans; County also filed a federal action against the NIGC and the BIA regarding the EA for the hotel and casino project.)² The trial court consolidated the petitions and denied them in all respects, save one. The petitions were granted on the issue of whether the EIR's regional transportation conformity approach to analyzing traffic-based air quality impacts met the state air quality standard for ozone.

² We grant Caltrans' requests in case Nos. C046372 and C048141 for judicial notice of the trial court's January 10, 2005, decision in that federal action (*El Dorado County v. Gale Norton et al.* (E.D. Cal. case No. CV. S-02-1818 GEB DAD). (Evid. Code, §§ 452, 459.) We deny all the other requests for judicial notice, all of which were made in C048141: these include Caltrans' request regarding the El Dorado County Air Pollution Control District CEQA Guide; the Tribe's request regarding the general conformity guidance booklet from the EPA; and the Tribe's request of January 25, 2005 (covering Auburn Indian history report and restoration act, transportation conformity reference guide, various other orders in the federal trial court action listed above, an EIR on another interchange project, and the legislative history of the California Clean Air Act).

DISCUSSION

1. *Standard Of Review*

In reviewing CEQA issues on appeal, we determine, independently from the trial court, whether the relevant agency prejudicially abused its discretion either by failing to comply with legal procedures or by making a decision unsupported by substantial evidence. (*Citizens of Goleta Valley, supra*, 52 Cal.3d at p. 564; *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911-912.)

Here, we review the adequacy of an EIR. An EIR carries out CEQA's purpose of protecting California's environmental quality by identifying the significant environmental impacts of a proposed project, the ways those impacts can be mitigated or avoided, and the alternatives to the project. (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1026 (*Village Laguna*); *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 106-107 (*Communities for a Better Environment*).)

“‘[T]he EIR is the heart of CEQA’ and the integrity of the process is dependent on [its] adequacy” “An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. . .” [Citations.] . . .’ . . . [¶] . . . [¶] . . . A prejudicial abuse of discretion occurs “if the failure to include relevant

information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process."'' (Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs. (2001) 91 Cal.App.4th 1344, 1355 (Berkeley Jets).) "Thus, [a] reviewing court "does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document."'' (Citizens of Goleta Valley, supra, 52 Cal.3d at p. 564.)

2. Analysis Of Air Quality Impacts

The subject of air quality comprises two basic issues in these consolidated appeals. The first issue involves a challenge to the method that was used to analyze the project's traffic-based air quality impacts involving ozone--the transportation conformity determination. The second issue comprises the whole of the second appeal, and involves the transportation conformity determination's relationship to the attainment of the state ozone standard. We discuss these in turn.

A. Transportation Conformity Determination

In determining that the interchange and hotel/casino would not have a significant traffic-based air quality impact regarding certain ozone precursors at issue, the EIR relied exclusively on a regional transportation conformity determination. County contends that, through this exclusive reliance, the EIR failed to disclose and analyze, as required by CEQA, the traffic-based ozone precursor emissions (reactive organic gases--ROG, and nitrogen oxide--NOx) that would be

specifically generated by the operation of the interchange/hotel-casino. We agree with County. (As noted, in its air quality analysis, the EIR analyzed the interchange together with the hotel/casino. In discussing this issue, our concern is with the traffic-related emissions resulting from the interchange's operation (i.e., use) as opposed to its construction; a general conformity approach was employed for construction-related emissions and is not at issue here.)

A brief background is in order. The federal Clean Air Act requires the adoption of health-based federal air quality standards for certain air pollutants (including, as relevant here, the two ozone precursors at issue), and requires that states adopt regional-based state implementation plans (SIPs) to attain those standards. (42 U.S.C. §§ 7409, 7410.) The relevant SIP here notes that the Sacramento region, in which the interchange is located, is a "severe" ozone nonattainment region. The Sacramento nonattainment-ozone region comprises all of Sacramento and Yolo Counties, portions of Solano and Sutter Counties, and all of El Dorado and Placer Counties, except for the Lake Tahoe Air Basin.

The federal Clean Air Act requires that federally approved transportation projects located in nonattainment regions, such as the interchange project, must conform to "mobile source emissions budgets" (i.e., traffic-based emissions standards) established in the SIP. (See 42 U.S.C. § 7506.) For the Sacramento nonattainment-ozone region, the "mobile source emissions budgets" for the ozone precursors ROG and NOx, as set

forth in the SIP, are 31.32 tons per day for ROG and 61.35 tons per day for NOx (these are the maximum allowable emission standards for the region).

In the EIR, Caltrans concluded that the interchange/hotel-casino project would not have a significant impact on air quality regarding ROG and NOx because the project's operation was in conformity with the regional "mobile source emissions budgets" set forth in the SIP.

County contends that this regional air quality analysis improperly fails to disclose and analyze the specific traffic-based ROG and NOx emissions from the interchange and hotel/casino project. We agree.

In the EIR, Caltrans noted that the air quality analysis was done at a "project level," stating, "[t]his project-level transportation conformity determination compares forecasts of regional air pollutants to thresholds, sometimes referred to as 'emissions budgets.'" Caltrans later elaborated in the EIR: "The general approach used in conducting the transportation air quality conformity analysis was to develop forecasts of regional mobile source emission levels, including emissions associated with the [interchange and hotel/casino] project, and compare these emission levels to previously[]established thresholds. The thresholds, referred to as 'emissions budgets,' were established during development of the Sacramento area's SIP. The [interchange and hotel/casino] project's conformity with the SIP is demonstrated when the forecasted emission levels [which are based on the project and all other existing and planned

transportation projects in the region], are found to be within the emissions budgets." Under this approach, the forecasted regional mobile source emissions level for 2005 for ROG was 29 tons per day (which conforms to the SIP's mobile source emissions budget of 31.32 tons per day), and the forecasted regional mobile source emissions level for NOx was 56.82 tons per day (which conforms to the SIP's mobile source emissions budget of 61.35 tons per day). In effect, the EIR established the regional conformity emissions budgets of the SIP as the sole threshold (i.e., indicator) of significant traffic-based air quality impact for the interchange and hotel/casino.

There is a clear problem in relying *exclusively* on this regional transportation conformity approach to analyze the interchange and hotel/casino's specific traffic-based impacts involving the ozone precursors ROG and NOx. The regional conformity approach does not tell us what the *interchange/hotel-casino project is specifically contributing* in terms of ROG and NOx transportation emissions. The "forecasts of regional mobile source emission levels" in this regional conformity approach comprise the ROG and NOx emissions from *all* existing and planned transportation projects, *including* the interchange/hotel-casino project, *in the Sacramento nonattainment-ozone region*. In other words, these regional "forecasts" are a combination of the interchange/hotel-casino's traffic-based ROG and NOx emissions *and* the ROG and NOx emissions from all other existing and planned transportation projects in the Sacramento nonattainment region. These regional "forecasts" are then compared to the

nonattainment region's "mobile source emissions budgets" for ROG and NOx in the SIP to see if the forecasts conform to the budgets; if they do, the conclusion is that there is no significant impact.

In this way, the specific traffic-based ROG and NOx emissions of the interchange/hotel-casino are known (or have been estimated) but are never disclosed. We know that the traffic-based ROG and NOx emissions from the interchange/hotel-casino, when added to those from all other existing and planned transportation projects in the Sacramento nonattainment-ozone region, do not exceed the corresponding regional mobile source emission budgets for the SIP attainment plan. But we have no idea (1) what the interchange/hotel-casino's specific traffic-based ROG and NOx emissions (or estimates) are; (2) what their specific contributions to the emissions budgets are; and (3) whether these emissions and contributions are significant (one example of this may be how these emissions and contributions compare to a range of samples from the other transportation projects in the region that make up the transportation conformity analysis). This is no small moment, given the enormous size and scope of the interchange/hotel-casino project as detailed by the impressive figures noted above in the Background section (the project will be one of the largest commercial developments in El Dorado County in terms of size and traffic generation). Using the EIR's own estimates, the interchange/hotel-casino project is expected to generate approximately 2.8 to 3.5 million vehicle trips per year.

Failure to disclose and analyze the interchange/hotel-casino's known (or estimated) traffic-based ROG and NOx impacts renders the EIR inadequate, incomplete, and insufficient as an informational document for the decisionmakers and the public. (*Berkeley Jets, supra*, 91 Cal.App.4th at p. 1355.) In short, the regional transportation conformity approach provides part of the traffic-based air quality analysis, but not the whole of it, as Caltrans maintains.

The situation here is similar to that in *Berkeley Jets*. There the court found an EIR deficient in addressing the nighttime noise impacts to residential neighborhoods from an airport expansion project. The EIR established a 65-CNEL (Community Noise Equivalent Level) as the sole threshold for significant noise exposure and identified which houses would be significantly affected. (*Berkeley Jets, supra*, 91 Cal.App.4th at pp. 1373-1374, 1378, 1381.) Any increase in noise under this 65-CNEL threshold was excluded from analysis in the EIR. (*Id.* at p. 1373.) The court rejected this approach, explaining that the airport expansion project could increase a community's nighttime noise level to 64.9 CNEL, and under the sole criterion of the 65-CNEL threshold, this increase would not create a significant impact for purposes of CEQA. (*Id.* at p. 1381.) The flaw in this approach was its failure to provide, in addition to the 65-threshold analysis, the most fundamental information about the project's noise impacts, including the existing ambient noise levels, the number and frequency of additional nighttime flights, and their effect on ambient noise levels and

sleep. (*Berkeley Jets, supra*, 91 Cal.App.4th at pp. 1381-1382.) Similarly, here, by establishing the regional transportation conformity emissions budgets of the SIP as the sole threshold of significance, the EIR failed to disclose and analyze the most fundamental information about the interchange/hotel-casino's traffic-based air quality impacts involving ROG and NOx, *including what those impacts specifically are and how much of the regional emissions budgets they constitute.*

Another way to look at this is through the prism of impacts that an EIR must assess for a given project. An EIR must evaluate a project's significant (1) direct impacts to the environment (those caused by the project and occurring at the same time and place); (2) reasonably foreseeable indirect impacts (those caused by the project but later in time or farther removed in distance); and (3) cumulative impacts (the project's incremental impact when added to other related projects). (CEQA Guidelines, §§ 15358, 15355, 15126.2.) As we shall explain, here the EIR in effect used only a cumulative impact air quality analysis to evaluate project-specific impacts.

A regional transportation conformity approach based on an SIP may provide a sufficient analysis of cumulative impacts. This is because a cumulative impact analysis examines the incremental impact of a project when added to other closely related existing and reasonably foreseeable projects. (CEQA Guidelines, § 15355, subd. (b); Pub. Resources Code, § 21083, subd. (b)(2).) And a lead agency may determine that a project's

cumulative impact is insignificant if the project will comply with a previously approved plan that is specifically designed to reduce the cumulative problem within the geographic area in which the project is located (such as an air quality plan; here, the SIP). (CEQA Guidelines, § 15064, subd. (h)(3).) (This dispenses with County's contention that the transportation conformity determination failed to analyze properly the cumulative impacts of the interchange operation regarding the ozone precursors.)

However, as County points out, a cumulative or regional impact analysis cannot be used to trivialize or mask project-specific impacts. (See *Communities for a Better Environment*, *supra*, 103 Cal.App.4th at p. 118; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.) That is what happened here. The regional-based cumulative impact analysis afforded by the transportation conformity determination was deemed the *complete* traffic-based air quality analysis for the ROG and NOx ozone precursors; this improperly dispensed with the disclosure and analysis of the interchange/hotel-casino project's specific traffic-based ROG and NOx emissions and contributions.

Caltrans argues that County's challenge to the regional transportation conformity approach is nothing more than an improper challenge to Caltrans' discretion to choose the methodology by which to evaluate air quality impacts. (See *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 412.) In support of this argument, Caltrans cites to Appendix G

of the CEQA Guidelines. Section III of the Sample Questions contained in Appendix G sets forth a framework by which EIRs can analyze air quality impacts. As relevant under section III of Appendix G, Caltrans argues, the regional conformity approach aligns with applicable air quality plans and standards, and does not result in any cumulatively considerable net increase of any criteria pollutant for which the project region is in nonattainment (including ozone precursors). (CEQA Guidelines, Appen. G, § III, subds. a), b), c).) Caltrans also argues that the regional conformity approach is well-suited to the transient nature of transportation emissions and the regional nature of the ozone problem.

There is a problem with Caltrans' methodology argument. While a lead agency has discretion to choose the method to evaluate environmental impacts, the method chosen must provide an adequate analysis. This is illustrated by *Berkeley Jets*, where the court rejected the use of the 65-CNEL threshold "[m]ethodology" as the "[s]ole [i]ndicator" of significant effects from noise. (*Berkeley Jets*, *supra*, 91 Cal.App.4th at pp. 1377, 1381-1382.) Similarly, as we have seen, the regional transportation conformity approach fails as the sole indicator of significant effects from ROG and NOx. That approach fails to disclose and analyze what the interchange/hotel-casino project is specifically contributing in terms of those traffic-based ozone precursors. In gambling parlance, what does the interchange bring to the table? We do not know, but the EIR should be telling us.

County raises three methodology issues of its own. First, it claims the emissions model used for the regional transportation conformity approach, the EMFAC7F, was outdated in its car-fleet mix (too few SUVs). Substantial evidence shows, however, that this model was appropriate and current for use in that approach when the EIR was drafted. The appropriateness of using the EMFAC7F model to determine the project's specific traffic-based emissions and contributions of ROG and NOx can be considered on remand.

Second, County claims that, instead of the regional transportation conformity approach, the EIR should have used the thresholds of significance for project air quality impacts set forth in the CEQA guide from the El Dorado County Air Pollution Control District (the District CEQA Guide). This matter can be considered on remand when the project's specific traffic-based emissions and contributions of ROG and NOx are disclosed and analyzed. We are in no position to determine the applicability of the District CEQA Guide on the issue of these specific items.

And third, County challenges Caltrans' disavowal of the URBEMIS emissions results, which County claims were the only project-specific air quality results noted in the EIR. This matter can also be considered on remand where the focus will be on a project-specific disclosure and analysis of ROG and NOx.³

³ To show it had not relied exclusively on the regional transportation conformity approach, Caltrans claimed at oral argument that a chart based on the URBEMIS results showed that Caltrans had examined and disclosed the project's specific air

**B. The Second Appeal (C048141) --Transportation
Conformity Determination and the State Ozone
Standard**

In the second appeal in this matter, which we have consolidated with the first, Caltrans, the Tribe and Lakes Entertainment have appealed from an order rejecting Caltrans' further return to the writ of mandate. (See *Barrett v. Stanislaus County Employees Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1601, fn. 4 (*Barrett*) [such an order is appealable].) The substantive issue in this appeal is whether the regional transportation conformity determination, which, as discussed above, relied on federal air quality standards regarding ozone, accounted for the ozone precursors ROG and NOx in the context of attaining the more stringent state ozone standard. As we shall explain, we are foreclosed from reviewing this substantive issue on procedural grounds: we agree with Caltrans and the Tribe that the County and Voices failed to exhaust their administrative remedies on this point.

In its ruling on the writ of mandate, the trial court stated: "In one important respect, the transportation conformity determination for the . . . interchange[/hotel-casino project] may not have provided an adequate method for determining the significance of the [project's operational] air quality impacts under CEQA. . . . [¶] . . . [¶] [T]his matter must be remanded to Caltrans for clarification of whether the

quality impacts. However, Caltrans may not simultaneously rely upon and disavow these results simply to suit different purposes.

mobile source ROG and NOx emissions budgets for the Sacramento nonattainment area [as set forth in the SIP] constitute levels of ROG and NOx that permit attainment of the state ozone standard"; if not, CEQA would require further analysis as to the state ozone standard.

The federal Clean Air Act's ambient air quality standard for ozone is 0.12 parts per million (ppm). California's Clean Air Act imposes a more stringent standard of 0.09 ppm. However, while the federal act imposes specific attainment dates for severe nonattainment areas to achieve the federal standard, the California act requires that its standard be achieved "by the earliest practicable date." (42 U.S.C. § 7511, subd. (a); Health & Saf. Code, §§ 40910, 40913, subd. (a).)

Largely based on this federal-quantitative/state-qualitative distinction as to attainment specificity, Caltrans explained in returns to the writ that the transportation conformity determination qualitatively demonstrated that the state standard was being achieved; however, a quantitative demonstration for the state standard was not feasible.

The trial court was skeptical of Caltrans' explanation, reasoning that numerical data existed that could be correlated with the state quantitative standard of 0.09 ppm. In an order, the court concluded that Caltrans' return did not satisfy the requirements of the writ. Caltrans (as well as the Tribe and Lakes Entertainment; collectively for this section of the discussion, Caltrans) then appealed this order.

On appeal, Caltrans contends that the issue here--whether the regional transportation conformity determination discussed above (i.e., whether the project's conformity with the regional mobile source emissions budgets for ROG and NOx in the SIP) constitutes levels of ROG and NOx that permit attainment of the state ozone standard--is an issue that was never raised in the administrative proceedings. Instead, the issue was first raised by the trial court in its ruling on the writ petition. Consequently, the argument goes, County and Voices failed to exhaust their administrative remedies regarding this issue and we are foreclosed from reviewing it. We agree.

To obtain judicial review of an agency's alleged violations of CEQA, an aggrieved party must first exhaust its administrative remedies by presenting, orally or in writing, its specific objections to the agency decisions in question. (Pub. Resources Code, § 21177, subd. (a); *Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 894 (*Resource Defense Fund*); *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197-1198 (*Coalition for Student Action*); Remy et al., *Guide to the California Environmental Quality Act* (10th ed. 1999) pp. 578-579 (hereafter Remy, *CEQA Guide*).) The purpose of the exhaustion doctrine is to ensure that public agencies have a chance to respond to articulated factual issues and legal theories before their actions are subjected to judicial review. (Remy, *CEQA Guide*, *supra*, at p. 579.) "If the doctrine did not exist, parties disputing the wisdom of agency actions would often refrain, for

purposes of political or litigation strategy, from revealing their alleged grievances to agency decisionmakers; and many disputes that could be resolved at the agency level would needlessly burden the courts." (*Ibid.*)

Although a plaintiff need not have *personally* raised the issue (so long as he or she objected to the project on some basis in the administrative proceedings), "the exact issue raised in the lawsuit must have been presented to the administrative agency so that [the agency] will have had an opportunity to act and render the litigation unnecessary." (*Resource Defense Fund, supra*, 191 Cal.App.3d at p. 894; Pub. Resources Code, § 21177, subds. (a), (b).) If any party seeks judicial relief without having first exhausted its administrative remedies, the court must deny relief for lack of jurisdiction. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292-293; *Remy, CEQA Guide, supra*, at p. 579.) The exhaustion doctrine is jurisdictional at least insofar as a court "does not have the discretion to refuse to apply the doctrine in cases where it applies." (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1216; *Sacramento County Deputy Sheriffs' Assn. v. County of Sacramento* (1990) 220 Cal.App.3d 280, 285-286; see also *Hood v. Hacienda La Puente Unified School Dist.* (1998) 65 Cal.App.4th 435, 440-441 (*Hood*).)

The *closest* that anyone came in the EIR administrative proceedings to raising the substantive issue that County and Voices seek judicial review of--i.e., whether the regional

transportation conformity determination encompasses levels of ROG and NOx that permit attainment of the state ozone standard-- came in the following comments, which we quote in our own arrangement:

"Because the EIR/EA improperly uses federal conformity criteria for CEQA purposes, it does not contain an actual CEQA-compliant air quality impact analysis. . . . Instead, the EIR/EA should use the thresholds of significance [for determining significant environmental impact] adopted by the El Dorado County Air Pollution Control District . . . in its . . . 'District CEQA Guide' The Guide contains specific, user-friendly methodologies for examining project-specific impacts of emissions of ROG and NOx, CO [carbon monoxide], PM₁₀ [particulate matter], visibility, and other pollutants for which state and federal ambient air quality standards exist. . . . Under the District CEQA Guide, the following criteria would be applicable:

"ROG and NOx 82 lbs/day

"CO State and Federal Ambient Air Quality Standards

"PM₁₀ State and Federal Ambient Air Quality Standards

"The ROG and NOx criteria are equivalent to 15 tons/year, and are considerably more stringent than the VOC and NOx [general] conformity thresholds of 25 tons/year. The EIR/EA therefore underestimates the significance of ROG and NOx air quality impacts. This is an important shortcoming because the project is located in a federal and state nonattainment area for

ozone, and ROG and NOx are the two direct precursors in the formation of ground level ozone."

These comments do not mention the state ozone standard of 0.09 ppm (although the draft EIR, at which these comments were directed, did), or any state ozone standard for that matter. More importantly, the comments do not raise any issue regarding the transportation conformity determination and the attainment of the state ozone standard. The comments are couched in the context of the Air Pollution Control District's standards (District CEQA Guide) and the EIR's *general* conformity analysis (an analysis which must be distinguished from the EIR's transportation conformity analysis; the EIR's general conformity analysis covered nontransportation-related air quality impacts, for example, construction-related exhaust emissions for the project's construction). The two ozone elements listed in these comments, ROG and NOx, do not even refer to "[s]tate . . . ambient air quality standards" (as do the other two non-ozone pollutants listed), but refer only to the standard of the District CEQA Guide (82 lbs./day; a standard that Caltrans maintains applies only to stationary air pollution sources rather than mobile sources).

We conclude that the doctrine of administrative exhaustion precludes us from considering the issue of whether the transportation conformity determination encompassed levels of ROG and NOx that permitted attainment of the state ozone standard. This "exact issue" was not raised in the administrative proceedings. (*Resource Defense Fund, supra,*

191 Cal.App.3d at p. 894.) However strict or loose this "exact issue" phrasing is to be construed, that standard of failure to exhaust was met here. (See *Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1446-1450; Remy, CEQA Guide, *supra*, at pp. 584-586 [discussing that decision]; *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 176-177 [less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding because the parties in administrative proceedings are generally not represented by counsel].) The transportation conformity issue here lends itself readily to the "exact issue" standard. This conformity issue encompasses the application of a distinct, numerical, statutory air quality standard (the state ambient air quality standard for ozone of 0.09 ppm) to a distinct, widely known analytical approach for determining air quality impacts (the transportation conformity approach). (See *Coalition for Student Action, supra*, 153 Cal.App.3d at p. 1198 ["technical deficiencies" are quite amenable to the exhaustion doctrine].) There was no reason that this exact issue could not have been raised in the administrative proceedings; failure to do so precludes its tender in court.

Not so fast, argue County and Voices. They raise three points they claim counter our conclusion. We take these in turn.

First, County points to comments it made in the administrative proceedings before the BIA and NIGC involving

the EA. These comments are attached as an appendix to the EIR. In those comments, County (1) noted that it (as a jurisdiction) "violates the state and federal ambient air quality standard for the criteria pollutant ozone"; (2) stated that the air quality discussion should indicate adoption and compliance "with standards no less stringent than federal and state air quality standards"; and (3) noted that it "is classified as nonattainment for ozone . . .; therefore, the impact of this operation on long-term attainment status should be determined." However, although the EIR incorporated the EA, these comments were made in a different administrative proceeding to a different lead agency on a different environmental document and concerned a different air quality analytical method (County concedes these comments were made in the context of a general conformity analysis rather than the transportation conformity approach to traffic-based air quality impacts the EIR employed).

Second, County contends that Caltrans untimely raised the exhaustion argument. Several courts have concluded (this one apparently not among them) that the failure to exhaust an administrative remedy is a jurisdictional issue that may be raised at any time. (See *Hood, supra*, 65 Cal.App.4th at p. 441, and cases cited therein.) In any event, it was the trial court's writ ruling that first raised the issue of whether the transportation conformity determination permitted attainment of the state ozone standard. Caltrans attempted to answer this issue in returns to the writ, the trial court deemed these answers insufficient in an order on the return, and Caltrans

appealed from that order (raising the exhaustion issue). This was timely. And it was proper. (*Barrett, supra*, 189 Cal.App.3d at p. 1601, fn. 4 [as stated previously, an order finding inadequate a respondent's return to peremptory writ of mandate is appealable].) This also dispenses with County's claim that Caltrans is improperly appealing from the trial court's original writ rulings rather than the subsequent order on the return. Nor did Caltrans invite any error. Caltrans did not invite the trial court to find the transportation conformity determination insufficient.

And last, County quotes a response from Caltrans to an air quality comment made during the EIR proceedings. Caltrans responded that it "applies its own guidelines uniformly across the state in order to ensure conformity with the SIP and with national and state air quality standards," and that "conformity with federal and state requirements is the important analytical question, and thus . . . state guidelines should direct this analysis." Two quick points are in order. One, these are comments from *Caltrans*, not from County or Voices. Two, Caltrans made these comments in explaining in part why it did not use the air quality standards set forth in the *local* Air Pollution District CEQA Guide.

3. *Segmenting Environmental Review*

Voices contends that Caltrans improperly segmented its environmental review of the interchange from that of the hotel and casino. This resulted in separate reviews that insufficiently accounted for the environmental effects of

the whole project. We disagree. First we discuss the legal sufficiency of the EIR's approach in reviewing the interchange and the hotel/casino. Then we tackle Voice's contentions regarding the EIR's alleged failure to address specific *combined* impacts of the interchange and the hotel/casino.

A. Segmentation--Legal Sufficiency

An EIR must consider a project's significant direct, indirect and cumulative impacts to the environment. (Pub. Resources Code, §§ 21061, 21100, 21065, 21083; see *Communities for a Better Environment, supra*, 103 Cal.App.4th at p. 114; CEQA Guidelines, §§ 15126.2, 15355, 15358.) "Where an individual project is a necessary precedent for action on a larger project, . . . with significant environmental effect, an EIR must address itself to the scope of the larger project." (CEQA Guidelines, § 15165.) And an EIR must include an analysis of the environmental effects of other action if that action (1) is a reasonably foreseeable consequence of the initial project, and (2) will likely change the scope or nature of the initial project or its environmental effects. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396 (*Laurel Heights*).)

The hotel and casino development is an indirect, clearly foreseeable consequence of the interchange that will change the scope and nature of the interchange's environmental effects. The interchange is a necessary precedent for the hotel and casino development. As such, the EIR must address itself to the

scope of that development. The question is whether the EIR has properly done so in a legal sense.

In answering this question, we must first briefly summarize Caltrans' legal authority over the hotel and casino development. Pursuant to the federal Indian Gaming Regulatory Act of 1988, authority over tribal gaming is exclusively federal; the only power the states have over this enterprise is a limited, delegated power to enter into tribal-state gaming compacts. (18 U.S.C. §§ 1166-1168; 25 U.S.C. § 2701 et seq.) California and the Tribe have entered into such a compact. (Gov. Code, § 12012.25, subd. (a)(44).) Here, the federal agency with authority to permit the proposed casino on the Rancheria, the NIGC, prepared and adopted an EA for the hotel and casino development, with mitigation measures, pursuant to the federal environmental quality law, NEPA; furthermore, the Tribe, under its compact with California, must make good faith efforts to mitigate any and all off-reservation environmental impacts. And, "[i]n deference to tribal sovereignty, neither the execution of a tribal-state gaming compact nor the on-reservation impacts of compliance with the terms of a tribal-state gaming compact shall be deemed to constitute a project for purposes of [CEQA]." (Gov. Code, § 12012.25, subd. (g).)

Pursuant to these jurisdictional limitations, Caltrans was foreclosed from preparing its own fully enforceable EIR concerning the hotel and casino. The on-reservation impacts of that development were properly the subject of federal environmental review. As we shall explain, Caltrans struck an

acceptable balance in the EIR between these jurisdictional limitations and the requirements of CEQA. The EIR did not improperly segment review of the interchange and the hotel/casino complex so as to shortchange environmental review of the whole development.

Direct environmental impacts are caused by the project and occur at the same time and place. (CEQA Guidelines, § 15358, subd. (a)(1).) Indirect environmental impacts are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. (*Id.*, subd. (a)(2).)

The environmental impacts from the hotel and casino generally fall within the definition of indirect impacts, and that is how Caltrans generally analyzed those impacts in the EIR. The EIR's project description is properly framed along these lines as well, stating: "[T]he proposed Shingle Springs Interchange Project . . . consists of the construction, operation and maintenance of an interchange in El Dorado County, California[,] to serve the existing Shingle Springs Rancheria The new interchange will provide open access to the Rancheria so that the property can be developed with uses consistent with the Tribe's Land Use Plan. The immediate plan for development on the Rancheria is a hotel and casino project that will be located in the southwestern portion of the Rancheria." (See *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193 [an accurate project description is essential for an informative and legally sufficient EIR]; Pub. Resources Code, § 21065

["'Project' means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment"].) (This also dispenses with Voice's contention that Caltrans improperly described the project in the EIR.)

After independently examining the NIGC's EA for the casino and hotel, Caltrans incorporated the EA into the EIR and eventually approved the environmental document as a joint EIR/EA with the BIA; BIA acted as the lead agency for NEPA review and Caltrans acted as the lead agency for CEQA review. Using the EA as a basis, Caltrans included a chapter in the EIR analyzing the environmental effects of the hotel and casino as indirect effects of the interchange. This chapter covered topography, geology, soils, seismicity, surface water and drainage, flooding, groundwater, water quality, air quality, biological resources, cultural resources, socioeconomic conditions, transportation, land use, public services, noise, hazardous materials, and visual resources.

Caltrans then took this analytical approach a step further for what it deemed the most pronounced impacts (principally off-reservation) from the interchange *and* the hotel/casino together. These impacts were likened to direct impacts. In the EIR, Caltrans analyzed the traffic-related transportation, noise, and air quality impacts of the interchange combined with the proposed hotel and casino as if they were a single project. The EIR's discussion of these impacts spanned nearly 80 pages, or almost a quarter, of the EIR's text.

Finally, the EIR devoted a separate chapter to analyzing the growth-inducing impacts of the interchange together with the hotel and casino, and another chapter to analyzing the cumulative impacts of the interchange that accounted for the casino and hotel.

Thus, the EIR evaluated generally the environmental impacts of the hotel and casino as indirect effects of the interchange project. The EIR analyzed specifically the most pronounced impacts (principally off-reservation) resulting from the interchange and the hotel/casino together (traffic-related transportation, noise and air quality impacts) as if those impacts were direct effects of the interchange combined with the hotel/casino. And the EIR examined the growth-inducing and cumulative impacts of the interchange and the hotel/casino. In this way, Caltrans' EIR properly considered the indirect, the direct, and the cumulative impacts of the interchange and hotel/casino. As the trial court noted, this "minimized the risk attendant upon project segmentation: a full assessment of the combined and cumulative environmental effects of the interchange and the hotel and casino was prepared and made available to inform decisionmaking and public participation in the project approval process."

Finally, the situation here is not like those presented in decisions that have found improper segmentation, such as *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151 and *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994)

27 Cal.App.4th 713. In *Citizens Assn. for Sensible Development*, the lead agency approved a proposed shopping center by dividing two related portions of the project--a general plan amendment and a tentative tract map approval--into two projects. The lead agency then environmentally reviewed the "two projects" separately and adopted separate negative declarations (no EIR required) for each. (*Citizens Assn. for Sensible Development, supra*, 172 Cal.App.3d at pp. 165-166.) In *San Joaquin Raptor*, the EIR for a residential development that also required a sewer system expansion contained no analysis of their combined environmental effects, either as two severable projects or as one project. For example, the EIR stated the development project would consume only 11 acres of prime farmland, never mentioning that the sewer expansion would take another 12 acres of such farmland. (*San Joaquin Raptor, supra*, 27 Cal.App.4th at p. 733.)

We conclude that Caltrans did not improperly segment the review of the interchange from that of the hotel and casino under CEQA law. We now turn to more factual-based segmentation issues.

B. Segmentation--Specific "Combined" Impacts

i. Water quality

Voices contends the EIR failed to address the combined increase in drainage-related impervious surfaces from both the casino/hotel and the interchange. We disagree.

The EIR, relying on the EA, notes that the casino and hotel will create 29 acres of impervious surfaces. The drainage and

water quality impacts from these surfaces, states the EIR, will be reduced to less than significant effects from the following mitigation measures imposed in the EA: an on-site detention basin; 100-year-storm surface drainage pipes; and a series of oil/grease/sediment traps. The interchange itself, states the EIR, will add only 2.27 acres of impervious surface and 1.75 acres of other altered surfaces (slopes, fill areas, graded swales, etc.). The EIR concludes that the interchange will present no cumulative drainage impacts in light of existing culverts and specified drainage mitigation measures. The EIR in this respect stands in contrast to the one described just above in *San Joaquin Raptor*.

Voices also claims the EIR failed to address the impacts of a potential failure of the wastewater treatment system. But Caltrans, in its responses to EIR comments, explained why (too speculative).

We conclude the EIR adequately addresses these water quality contentions from the perspective of the interchange and the hotel and casino.

ii. Soil erosion

Voices argues that the EIR never considered the grading impacts of the casino and hotel. That is not true. The soils portion of the EIR was based on a "Geology, Soils and Seismicity Technical Study" that analyzed casino and hotel grading as an indirect effect of the interchange. The EIR itself stated, relying on this technical study: "Appendix G of the Final EA contains the geographic extent of grading proposed by the hotel

and casino project. . . . The [EA] concluded that the hotel and casino would result in a less-than-significant effect [regarding soils] given the fact that development will occur on relatively non-expansive soils; will comply with [the applicable] Grading, Erosion and Sediment Control Ordinance [and with the Uniform Building Code]; and will follow the construction specifications found in Appendix G of the Final EA."

Voices also claims the EIR failed to address the grading impacts of the casino and hotel together with the interchange. The grading impacts of the casino and hotel, as just noted, were set forth in the EA, which was incorporated into and discussed in the EIR. As also noted, those impacts were deemed less than significant given certain conditions and requirements. The EIR further noted that the grading and soil erosion impacts from the much smaller interchange portion encompassed essentially the construction of the interchange's proposed on- and off-ramps. And those impacts were reduced to less than significant pursuant to certain required standards (grading ordinances, building codes, Caltrans' standards). This is sufficient analysis for EIR informational purposes.

iii. Hazardous materials

Voices asserts that the EIR's finding that the project site contains serpentine rock which may release asbestos (if crushed) cannot be squared with the incorporated EA's finding (stated in the EIR) that the project site contains no hazardous materials "contamination."

This assertion fails for two reasons. First, as a matter of semantics, "contamination" is the state of being contaminated, a condition the project site is not in. Second, and more importantly, the EIR and the incorporated EA both recognize this asbestos potential from serpentine rock and impose measures to reduce these potential effects to less than significant.

iv. Noise

Voices raises three contentions as to noise.

First, Voices contends the EIR's noise analysis did not include the casino and hotel. The EIR states that the existing noise environment is dominated by Highway 50 traffic, so the EIR analyzed the traffic-related noise effects of the interchange and the hotel/casino without a distinction being made between them (since the casino development will comprise nearly all of the interchange's traffic volume). The EIR concludes that the increases in traffic noise levels will be 1 to 4 dBA higher than present peak hour traffic noise levels, and these increases are less than the threshold for a substantial noise increase, which is set at 12 dBA. The EIR also notes from the incorporated EA that the hotel and casino will generate relatively minor nontraffic noise that has been mitigated to insignificance through siting and shielding requirements, design specifications, and construction standards.

Second, Voices challenges the EIR's methodology for the noise analysis. Voices argues that the analysis ignores all but four of the noise modeling site locations, as well as shifts

in traffic volumes and levels of service. But Voices concedes in its brief that the EIR's noise assessment measured four locations near the interchange and predicted noise levels at 10 potential receivers nearby. This methodology seems appropriate for analyzing the noise from the interchange and the hotel/casino in a traffic-dominated noise environment. (See *Greenebaum, supra*, 153 Cal.App.3d at pp. 412-413 [agency discretion to choose methodology].)

Finally, Voices complains that the EIR failed to identify noise standards from County's General Plan. Only standards from "applicable" general plans need be discussed in an EIR, and Voices does not seriously dispute Caltrans' claim that the general plan standards are inapplicable here. (CEQA Guidelines, § 15125, subd. (d).) Moreover, Voices does not challenge the threshold of significance used by the EIR--the 12 dBA threshold.

v. Aesthetics

Voices contends the EIR failed to address the visual impacts of the interchange and the hotel/casino together, as well as the issue of light pollution.

The EIR addresses the visual impacts of the interchange and the hotel/casino. These two basic structures occupy distinct visual settings that do not lend themselves to collective visual analysis; the interchange is on a freeway and the casino development is located behind, and nestled into, an existing wooded hillside away from the freeway.

As for light pollution, the Tribe, as a matter of comity, has obligated itself to have the hotel and casino conform to the

relevant County ordinances regarding outdoor lighting, including County Ordinance No. 17.14.170. Through this conformance, the character of the night sky should be minimally impacted, and even then for only a few hundred feet with the range of the hotel/casino lighting.

vi. *Biological resources*

Voices claims that the EIR addresses the impacts of the interchange on biological resources without considering such impacts from the much larger disturbance (nearly 10-fold) of the hotel and casino. We disagree.

The EIR, relying on the EA, discussed the impacts to biological resources from the hotel and casino. The topics covered included wetlands/jurisdictional waters, special status species, and nesting raptors. The EIR noted the mitigation measures for these resources. The EIR also discussed the impacts to biological resources from the interchange. As noted in the EA, a Natural Environment Study covering biological resources was developed for Caltrans' consideration in reviewing the interchange project. In the EIR, Caltrans adopted the mitigation measures recommended in this study; these mitigation measures were consistent with those in the incorporated EA.

vii. *Growth-inducing impacts*

Voices complains that the EIR ignored the combined development pressures of the interchange and the hotel/casino. Voices claims the EIR ignored the casino's placement into a rural-residential setting, downplayed the potential for additional nearby commercial development with its attendant

socioeconomic effects, failed to account for the impacts from 1,500 casino employees, and failed to consider the socioeconomic impacts on South Lake Tahoe. We disagree.

The EIR devotes a chapter, albeit a small one, to growth-inducing impacts from the interchange together with the hotel/casino. In that chapter, the EIR acknowledges that the interchange site is located in a rural, large-parcel residential area nine miles west of Placerville. The chapter continues. The interchange is being constructed for a single purpose: to provide unrestricted access to the Rancheria, which in turn will allow development of a hotel and casino complex. The interchange is designed to provide access only to and from the Rancheria, without any engineering way to "ramp off" to neighboring communities. Off-Rancheria development will not be facilitated by the interchange. Growth-inducing impacts from the hotel and casino comprise a growth in jobs (1,500 employees) and possibly in housing demand. The EIR details the area's sufficient capacity to handle this demand. The EIR also addresses the socioeconomic character of the surrounding area, including South Lake Tahoe, concluding that the project will not affect or impede planned economic growth (which County will still control), divide any neighborhoods, disrupt community cohesion, or displace any people or housing.

4. *Interchange-Specific Impacts*

Voices claims the EIR inadequately analyzed what Voices has termed "interchange-specific" impacts. These comprise traffic, growth-inducing, and air quality impacts. We have previously

resolved the issues that Voices raises concerning the growth-inducing and air quality impacts.

As for traffic impacts, Voices raises two points.

First, Voices claims the EIR understated the number of car trips generated by the interchange (and thus the hotel/casino), allowing Caltrans to conclude that the project's air emissions would fall "just below" de minimis thresholds (i.e., the regional "emissions budgets" discussed above in the air quality conformity analysis). We note initially that this claim rests on a faulty premise. As discussed above in our section on Analysis Of Air Quality Impacts (§ 2), it was not simply the interchange project's air emissions that fell within the regional emissions budgets (thresholds) for ROG and NOx, it was the interchange project *combined with* all other existing and planned transportation projects in the Sacramento region that did so. The interchange project's specific air emissions regarding ROG and NOx were never disclosed and analyzed, but must be, as we have concluded.

Caltrans has adequately defended its method of determining the trip generation rates. Caltrans used two approaches: an Urban Systems Marketing Study and an analysis of trip generation characteristics at five northern California Indian gaming casinos. The trip generation figures derived from these two approaches were then validated by trip generation studies involving Indian hotel-casinos in San Diego County and Minnesota, and by two studies using information from a well-recognized reference entity on this subject, the Institute of

Transportation Engineers. This choice of method was within Caltrans' discretion, so long as it provided an adequate analysis. (*Greenebaum, supra*, 153 Cal.App.3d at pp. 412-413.) The adequacy of this choice and analysis is perhaps best illustrated by the fact that both Voices and County, throughout their briefs, rely on Caltrans' trip generation estimates for the interchange of between 2.8 and 3.5 million trips (annually) to support their arguments.

Second, Voices is mistaken that the EIR erroneously omitted analysis of potential cumulative impacts on local roads and Highway 50 more than two miles west and five miles east of the interchange site. At County's request, the final EIR evaluated all local roads and Highway 50 in the County along which the project is predicted to increase existing traffic volumes by two percent or more. Nor did the EIR, as Voices asserts, ignore the project's impacts to already highly congested segments of Highway 50 near the Sacramento/El Dorado county line. The EIR projected the future cumulative daily traffic volumes for the Highway 50 segment between the county line and El Dorado Hills Boulevard/Latrobe Road for the year 2022, noted that this segment was anticipated to operate at a deficient level of service (LOS) of "F" without the project, and also noted that the project would increase this projected daily volume by 3.1 percent. The EIR considered this increase to be a significant impact that could be mitigated to less than significant through the following mitigation measure: pursuant to section 10.8 of the Tribal-State Compact (covering

off-reservation impacts), the Tribe will contribute a fair share contribution to future master planned improvements for this highway segment as identified by Caltrans and County.

5. *Environmental Setting*

Voices contends the EIR inadequately described the environmental setting as to certain aspects involving traffic, noise, biological resources, and water quality. We disagree.

"An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time . . . environmental analysis is commenced, from both a local and regional perspective. *This environmental setting* will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (CEQA Guidelines, § 15125, subd. (a), italics added.)

As for traffic, Voices first claims that the EIR failed to specifically identify the freeway segments presently operating at a low LOS. The EIR's environmental setting discussion for traffic and its traffic analysis does specify the existing LOS's for relevant freeway segments (Highway 50 in the vicinity of the interchange, locally and regionally), and these LOS's are, at worst, at "D" (the lower LOS of "E" is still considered acceptable). Voices also complains that the EIR ignored segments of Highway 50 that are already projected to operate at LOS "F" without the project. That is not true. The EIR identifies the one segment of Highway 50 projected to operate at LOS "F" in 2022 with or without the project (county line to El

Dorado Hill Boulevard/Latrobe Road), and specifies the projected increase in the daily volume of traffic for this segment from the project (3.1 percent), as well as a mitigation measure to alleviate this problem (tribal fair share contribution).

As for noise, Voices claims the EIR's discussion of environmental setting for noise focused only on locations near the interchange, avoiding other segments of the county road network that would also suffer noise impacts. The concept of environmental setting describes the physical environmental conditions "in the vicinity of the project." (CEQA Guidelines, § 15125, subd. (a), italics added.) According to the EIR, the "existing noise environment is dominated by traffic on Highway 50." The EIR assessed existing noise levels by measuring traffic noise at four locations and predicting (extrapolating) such noise at 10 others. Many of these predicted noise levels were at residential locations--that is, sensitive noise receptors some distance from the interchange and casino complex. Furthermore, the traffic to and from the interchange/hotel-casino will almost wholly use the interchange and Highway 50, rather than local roads.

As for biological resources, Voices maintains the EIR did not discuss the wildlife or habitats that might be affected by the project but that currently exist outside the project's boundaries. We are unsure what Voices is asserting here in the context of environmental setting. In its discussion of the environmental setting regarding biological resources, the EIR discusses the various habitats of the project site and immediate

area (oak woodlands/chaparral, annual grasslands, riparian) and the wildlife that use these habitats. The wildlife and habitats currently existing in the vicinity of the project site are essentially the same as those at the project site. The EIR adequately sets the setting.

Finally, as for water quality, Voices contends the EIR failed to address the *current* water quality conditions of the project site's *intermittent* drainages or nearby creeks. The emphasized words demonstrate the contradictory nature of Voices' contention. Not surprisingly, the EIR states that no water quality data exist for the intermittent and ephemeral drainages and creeks on the project site. In its environmental setting discussion on water quality, the EIR does describe the types of pollution comprising highway storm runoff, their average runoff concentrations, and their primary sources.

6. Project Alternatives

Voices contends the EIR failed to consider a reasonable range of alternatives. The EIR considered the required "no project" alternative, along with some alternative interchange designs. (See CEQA Guidelines, § 15126.6, subd. (e)(1).) Voices claims the EIR should have considered another location for the interchange, another design for it, another access route such as a frontage road from an existing interchange, and the development of a smaller hotel and casino that does not require the extent of access provided by the interchange. We find merit in Voices' last claim.

An EIR must consider a range of reasonable alternatives to the project which (1) meet most of the project's basic objectives; (2) avoid or substantially lessen one or more of the project's significant environmental effects; and (3) may be "'feasibly accomplished in a successful manner'" considering the economic, environmental, legal, social and technological factors involved. (*Citizens of Goleta Valley, supra*, 52 Cal.3d at p. 566; *Laurel Heights, supra*, 47 Cal.3d at p. 400; CEQA Guidelines, §§ 15126.6, subds. (a), (c), 15364.) The range of alternatives that must be discussed and their level of analysis are subject to a "rule of reason." (*Laurel Heights, supra*, 47 Cal.3d at p. 407; CEQA Guidelines, § 15126.6, subd. (f).) "'Absolute perfection is not required; what is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned.'" (*Village Laguna, supra*, 134 Cal.App.3d at p. 1029, quoting *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal.App.3d 893, 910.) Nevertheless, as our state high court has stated, "[t]he core of an EIR is the mitigation and alternatives sections." (*Citizens of Goleta Valley, supra*, 52 Cal.3d at p. 564.) Finally, an EIR should briefly explain why any alternatives were rejected as infeasible. (CEQA Guidelines, § 15126.6, subd. (c).)

As for the issue of another location, the alternatives procedure worked as envisioned. Placing the hotel and casino south of Highway 50 or entirely away from the site were rejected

because a northern placement served the project's basic goal of providing direct access to the Rancheria for economic development purposes, while offering numerous environmental advantages (reduced noise, traffic, air, visual and growth-inducing impacts).

As for the issue of interchange design, the EIR analyzed a "diamond" interchange design and two related variations as alternatives to the "flyover" design chosen. Voices is concerned about the "unsightly" flyover design, but the architectural renderings of the flyover, compared to the diamond, provide substantial evidence supporting Caltrans' decision to adopt the flyover proposal as aesthetically superior. Moreover, the diamond option presented growth-inducing impacts--from potential future connections--that the flyover proposal did not.

As for the issue of frontage road access from existing interchanges, the EIR properly explained why this alternative was infeasible. (See CEQA Guidelines, § 15126.6, subd. (c).) The EIR explained that this alternative would require the acquisition of existing private properties, including residential properties, owned by project opponents; this presented a difficult condemnation process.

That brings us to the alternative of a smaller hotel and casino. As presently envisioned, the hotel and casino complex would occupy 44 acres of the 160-acre Rancheria, employ about 1,500 persons, and include a 238,500 square-foot casino, a five-level, 250-room, 143,000 square-foot hotel, and parking to

accommodate 3,000 cars (including a five-level parking structure). Neither the EIR, nor the EA that the EIR incorporated, considered the alternative of a smaller hotel and casino. The EIR did not even touch on this issue. The EA's only "reduced intensity alternative" consisted of a 104,000 square-foot shopping center, with 347 parking stalls; this alternative was rejected as financially unable to meet the interchange costs necessary to develop the Rancheria economically.

In its briefing, Caltrans claims the EIR did not have to consider the smaller hotel-casino alternative, explaining in total: "The casino is not part of this project [i.e., interchange] and Caltrans does not have any jurisdiction over the Tribe or its on-reservation activities. CEQA defines 'feasible' as 'capable of being accomplished in a successful manner . . . taking into account . . . legal [. . .] factors.' [CEQA Guideline[s], § 15364.] Infeasible alternatives should not be analyzed. [Citations.] Caltrans cannot legally prevent the Tribe from developing a casino, so that is not a 'feasible' alternative under CEQA, and it should not be analyzed."

Caltrans cannot rely solely on this legal blanket to insulate itself from considering the alternative of a smaller hotel and casino. In considering whether an EIR had discussed a legally acceptable range of alternatives to a proposed coastal resort hotel, our state Supreme Court explained in *Citizens of Goleta Valley* that "jurisdictional borders are simply a factor

to be taken into account and do not establish an ironclad limit on the scope of reasonable alternatives. . . . [I]t is clear that the [lead agency] did not reject [the outside-jurisdiction alternative] solely because [that alternative] was no longer within the [agency's] planning jurisdiction; [it was] also shown that the site was not feasible because it had soil erosion [and size] problems We also recognize that many large-scale projects may call for the approval of one or more local agencies; we do not mean to suggest that the only discussion of alternatives required in an EIR would be those relating to the particular decisions that each local agency is empowered to take." (*Citizens of Goleta Valley, supra*, 52 Cal.3d at p. 575, fn. 7.) In short, alternatives may not be rejected for consideration "merely because" they are beyond an agency's authority. (Bass et al., CEQA Deskbook (2d ed. 1999) p. 112, italics added; see also *Environmental Defense Fund, Inc. v. Corps of Engineers* (5th Cir. 1974) 492 F.2d 1123, 1135 [construing NEPA's provision on alternatives as not limiting an agency to considering only those alternatives that the agency can adopt or put into effect or are within its regulatory control].)

Caltrans' bald assertion, for purposes of considering size alternatives, that the hotel and casino is not part of the interchange project ignores the position Caltrans took with respect to the segmentation issue discussed above. There, Caltrans reasonably recognized that the hotel/casino and the interchange were essentially one and the same regarding their

impacts on traffic, air quality and noise, and Caltrans also properly examined the other environmental impacts from the hotel/casino as indirect, reasonably foreseeable effects of the interchange. It is a simple fact that the development of the hotel and casino is effectively foreclosed without the direct access provided by the interchange. As the court in *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325 noted in a related context, construction of a road and sewer project on undeveloped land "cannot be considered in isolation from the development it presages." (*Id.* at p. 1336.) The "sole reason to construct the road and sewer project is to provide a catalyst for further development in the immediate area"; consequently, the EIR had to evaluate the forms and extent of the most probable future development resulting from the road and sewer project. (*Id.* at pp. 1337-1338.)

Finally, Caltrans' feasibility reasoning with respect to size alternatives is couched exclusively in terms of preventing the Tribe from developing a casino *at all*. The reasonable alternative at issue here is simply a *smaller* hotel and casino.⁴

⁴ At oral argument, Caltrans claimed that a discussion of the alternative of a smaller hotel-casino project was not warranted in the EIR because that project had no significant environmental effects. The hotel-casino had no significant environmental effects only because the EA had imposed various mitigation measures upon it. In this respect, the point of an EIR, as an informational document, is to discuss mitigation measures and reasonable alternatives to the project so a *fully informed* decision can be made regarding the alleviation of the project's environmental impacts. (See *Village Laguna, supra*, 134 Cal.App.3d at p. 1029 [what is required in an EIR is "the

Pursuant to the rule of reason, then, the alternative of a smaller hotel and casino falls within the range of reasonable alternatives to warrant consideration and discussion in the EIR. As noted, neither the EIR nor the incorporated EA mention, let alone discuss, this alternative. In the context of large development projects, the relevant cases on this topic state that "what is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned" (*Village Laguna, supra*, 134 Cal.App.3d at p. 1029); the discussion of alternatives must "represent enough of a variation to allow informed decisionmaking" (*Mann v. Community Redevelopment Agency* (1991) 233 Cal.App.3d 1143, 1151 (*Mann*); in short, the discussion must be "'sufficient to satisfy the informational goal of CEQA[']'" (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 714 (*Sequoyah*)).

All three of these decisions, in applying these legal standards to the facts before them, found that their respective EIRs had adequately discussed alternatives. In *Village Laguna*, the proposed project was the development of 20,000 dwelling units; the EIR analyzed alternative developments of 7,500, 10,000 and 25,000 units. (*Village Laguna, supra*, 134 Cal.App.3d at p. 1028.) In *Mann*, the EIR analyzed a large commercial project's alternatives that consisted of an office/food court

production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned'").)

project, a research and development project, and an increased retail square footage project; the office/food court project was similar in scope and function to another alternative that was claimed should have been included in the EIR. (*Mann, supra*, 233 Cal.App.3d at pp. 1147, 1149.) And in *Sequoyah*, the proposed project was a 46-unit development; the EIR analyzed alternative developments of 36, 45 and 63 units. (*Sequoyah, supra*, 23 Cal.App.4th at pp. 709-710.)

In contrast to *Village Laguna*, *Mann*, and *Sequoyah*, the EIR and the incorporated EA make no mention of a smaller hotel and casino. The only mention of a different-sized project is found in the EA, its so-called "reduced intensity alternative." But that alternative is a shopping center on tribal land that is about one-quarter the size of the proposed hotel and casino. We conclude that the discussion of alternatives in the EIR, including the incorporated EA, does not "represent enough of a variation to allow informed decisionmaking" (*Mann, supra*, 233 Cal.App.3d at p. 1151); and there has not been "the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned'" (*Village Laguna, supra*, 134 Cal.App.3d at p. 1029). The EIR must consider and discuss the alternative(s) of a smaller hotel and casino complex.

7. Consistency With An Adopted General Plan

Briefly, Voices contends that the EIR failed to examine the interchange and casino project's consistency with an adopted general plan, and relied on an invalid plan. We disagree.

The foundation for this argument is that the 1996 County General Plan referenced by the EIR was invalidated pursuant to a trial court judgment for failing to specify impacts that planned residential growth would have on traffic, water supplies, and a rural quality of life.

As for the consistency point, an EIR "shall discuss any inconsistencies between the proposed project and *applicable* general plans." (CEQA Guidelines, § 15125, subd. (d), italics added.) To the extent the County's 1996 General Plan has been invalidated, it is inapplicable. Furthermore, the interchange/hotel-casino project is located entirely on tribal, federal and state land and is consistent with the applicable land use plans and controls--the Tribe's land use plan and the Highway 50 right-of-way plan for transportation facilities and maintenance.

As for the issue about relying on an invalid general plan, Voices points to two references in the EIR of the 1996 County General Plan: one involving the cumulative development setting (partly based on development anticipated under that general plan); and one involving the model used for the cumulative traffic volumes (the model established in that general plan). The EIR also noted in the cumulative setting context that this general plan was being revised and that the revisions to date

did not include any substantial changes in relevant land use designations. As to these two references, the EIR was consistent with the best available general plan information, and Voices has not substantively disputed those references.

Nor is the situation here like that in *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, upon which Voices relies. In *County of Amador*, this court concluded that an ambitious water program to address significant population growth (and the program's accompanying EIR) could not be approved before a general plan addressing that growth had been adopted; to do otherwise would place "the proverbial cart before the horse." (*Id.* at pp. 940, 949-950.) Here the interchange/hotel-casino project does not depend on the fundamental "'charter for future development'" as envisioned in a county general plan, as was the situation in *County of Amador*. (See *id.* at p. 949.) We deal with an interchange/hotel-casino project that is entirely on noncounty property, almost wholly on tribal land, and in line with applicable land use plans.

8. Public Participation

Voices claims that Caltrans inadequately responded to public comments, inadequately provided notice of public meetings, and inadequately made available certain documents for public review.

As for the issue of responses to public comments, we note generally that the public's comments and Caltrans' responses to those comments--involving just the final EIR/EA--total over

400 pages of administrative record, and these responses are quite detailed.

Voices' more specific point on the issue of responses involves the subject of segmenting the interchange and the casino, as discussed above. Voices claims that Caltrans refused to respond to comments on the casino's impacts. Evidence showed that a Caltrans representative apparently stated at a project meeting that Caltrans did not want to respond to comments regarding on-site land use. Nevertheless, as discussed above, Caltrans, in the EIR, evaluated generally the environmental effects of the hotel and casino as indirect effects of the interchange project; analyzed specifically the most pronounced effects resulting from a combination of the interchange and the hotel/casino (traffic-related transportation, noise, air quality) as if those effects were direct effects of the project taken as a whole; and examined the growth-inducing and cumulative impacts of the interchange and the hotel/casino. In this way, the EIR covered the indirect, the direct, and the cumulative impacts of the interchange and hotel/casino. Caltrans explained this approach in its responses to comments and responded specifically to its analysis of these impacts.

As for the issue of inadequately noticing public meetings on the project, the scores of detailed public comments received on the project belie this claim. For example, in the spring of 2001, Caltrans held a series of three well-publicized public workshops as part of the process that actually developed the proposed project. The number of people attending these

workshops totaled about 340 (although many people may have attended more than one workshop), and the number of comment cards received totaled 110. The administrative record shows that Caltrans complied with the EIR procedure governing public review and comment on the EIR. This procedure included noticed public hearings on the project at which the public could comment in person, or after which the public could comment in writing. To the extent Voices complains about the public participation process involving the drafting of the EA, that is a matter to be addressed in the corresponding federal lawsuit concerning the EA.

Finally, as for the issue of specific documents unavailable for review, Voices centers its claim on one document--the Urban Systems Marketing Study. This study evaluated the number of car trips that would have continued on to South Lake Tahoe but for the Tribe's casino. This study can be made available for public review when Caltrans discloses and analyzes the project-specific ROG and NOx levels and air quality impacts from the interchange and hotel/casino.

Voices also claims that Caltrans violated CEQA by placing the EIR's incorporated documents in a nonproject county--Sacramento--thereby thwarting public review. (See CEQA Guidelines, § 15150, subd. (b) ["The EIR . . . shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or

more public buildings such as county offices or public libraries if the lead agency does not have an office in the county"].) The record appears to be in conflict on this point. In the EIR, Caltrans stated that an incorporated traffic study could be reviewed at the Caltrans District 3 office in Sacramento; nothing was said about review in El Dorado County. In a response to a public comment, Caltrans stated that all of the incorporated technical studies (including traffic) were available for review at its office and also at two public libraries within El Dorado County. We simply remind Caltrans of its duty regarding public access to incorporated documents, as set forth in CEQA Guidelines section 15150, subdivision (b).

DISPOSITION

In appeal No. C046372, the judgment is reversed to the extent it upholds the adequacy of the EIR in the following two respects: first, the analysis of the traffic-based air quality impacts from the ozone precursors ROG and NOx to the extent that analysis is based exclusively on the regional transportation conformity approach; and second, the analysis of alternatives that failed to evaluate the alternative of a smaller casino and hotel complex. To be sufficient, the EIR will have to disclose and analyze what the interchange/hotel-casino's specific traffic-based ROG and NOx emissions (or estimates) are, what their contributions to the regional emissions budgets are, and whether these emissions and contributions are significant (for example, in comparison to other existing or planned projects

within the transportation conformity analysis). The EIR must also consider and analyze the alternative, or alternatives, of a smaller hotel and casino complex. The matter is remanded to the trial court for it to issue a peremptory writ of mandate consistent with this disposition.

In appeal No. C048141, the order on further return and that portion of the judgment relating to that order--i.e., whether the regional transportation conformity approach encompassed the attainment of the state ozone standard--are reversed and the peremptory writ of mandate is discharged.

In all other respects, the judgment is affirmed.

Each party shall pay its own costs on appeal.

DAVIS, J.

We concur:

BLEASE, Acting P.J.

HULL, J.